3-31-87
Vol. 52 No. 61
Pages 10213-10356

federal register

Tuesday
March 31, 1987

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

Contents

Federal Register

Vol. 52, No. 61

Tuesday, March 31, 1987

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
630 10213
831 10215
890 10216

9 CFR
Proposed Rules:
1 10292
2 10298

12 CFR
Proposed Rules:
261 10233

14 CFR
39 (3 documents) 10217–10219

Proposed Rules:
39 (3 documents) 10236–10238

15 CFR
904 10324

18 CFR
282 10220

Proposed Rules:
1312 10342

19 CFR
141 10221
178 10221

21 CFR
178 10222

26 CFR
1 (2 documents) 10223
51 10224

Proposed Rules:
1 10290
51 10290

27 CFR
9 10224

29 CFR
1601 10224

30 CFR
Proposed Rules:
700 10352
736 10352

32 CFR
289 10225

Proposed Rules:
229 10342

36 CFR
Proposed Rules:
296 10342

40 CFR
Proposed Rules:
52 (2 documents) 10239, 10241

43 CFR
3160 10225

Public Land Orders:
6641 10225

Proposed Rules:
7 10342

47 CFR
0 10226
1 10226
21 10226
22 10226
23 10226
61 10226
68 10226
73 10226
76 10226
78 10226
80 10226
90 10226
94 10226
95 10226

50 CFR
219 10324
621 10324

Rules and Regulations

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Temporary Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing a temporary leave transfer program that permits Federal employees to donate annual and sick leave for the use of other Federal employees for medical or family emergency or other hardship situations *in not more than three cases.* This rule sets forth procedures under which nominations of potential leave recipients may be submitted to the Office and establishes rules for administering the program. The Office will make a study of the desirability, feasibility, and cost of permitting employees to donate annual and sick leave to other employees during the period of this temporary program. This program will terminate when a report concerning voluntary leave transfer policy is submitted to Congress.

DATES: This interim rule will become effective on March 31, 1987; comments must be received on or before April 30, 1987.

ADDRESS: Comments may be sent to Barry E. Shapiro, Acting Assistant Director for Pay Programs, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 3353, 1900 E Street, NW., Washington, DC. Nominations of potential leave recipients may be sent or delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Clarence Mathews, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Public Laws 99–500 and 99–591, Making Continuing Appropriations for Fiscal Year 1987, authorized the President to prescribe regulations under which the unused accrued leave of one officer or employee of the Federal Government may be transferred for use by another officer or employee of the Federal Government *in not more than three cases of personal emergency,* as defined in such regulations. This authority will terminate upon the issuance of a report in Congress concerning voluntary leave transfer policy.

Executive Order 12589 of March 18, 1987, delegated to the Office of Personnel Management the authority to publish implementing regulations and to prepare a report to Congress concerning voluntary leave transfer policy. This rule sets forth the procedures under which Federal agencies and employees and other interested parties may submit nominations of potential leave recipients to the Office, which will make the final selection of up to three leave recipients for participation in this temporary program.

This temporary program has very limited applicability and scope and is experimental in nature. Given the narrow scope of this program, the Office will select participants so as to include individuals representing a variety of situations in an effort to evaluate the concept of shared leave in different contexts. For example, the Office will consider personal emergencies involving employees who are required to care for ill family members, as well as those involving employees with serious medical or other hardship situations. Nonselection for participation in this program should not in any way be construed as representing a determination that an employee's medical or family emergency or other hardship situation does not constitute a "personal emergency."

The temporary leave transfer program will test the concept of providing income protection to an employee affected by a personal emergency that requires the employee's abence from duty for a prolonged period of time and that would result in a substantial loss of income to the employee because of the unavailability of paid leave. Therefore, leave transferred under this interim rule will be available for use on a current basis or may be retroactively substituted for leave without pay or used to liquidate advanced annual or sick leave granted to the leave recipient on or after October 30, 1986 (the date of enactment of Pub. L. 99–591), in response to the personal emergency.

Leave donors may transfer annual and/or sick leave to the leave accounts of a leave recipient, subject to the procedures established by the employing agency. The leave recipient may use the transferred leave for the same purposes as if he or she had accured the leave. However, the transferred annual leave will not be the basis for a lump-sum payment upon separation of the recipient, nor will the transferred sick leave be available for recredit upon reemployment by the Federal Government or for use in computing a civil service retirement annuity for such recipient. Any transferred leave remaining to the credit of the leave recipient will be restored to the accounts of the leave donors on a prorated basis when the agency determines that the personal emergency no longer exists, or the leave recipient's employment by the employing agency terminates.

Pursuant to section 553(b)(3)(B) and (d)(3) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the nomination of potential leave recipients and the final selection of leave recipients by the Office.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office is amending Title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below, and all other authority citations in Part 630 are removed:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. Laws 99-500 and 99-591 and E.O. 12589.

2. In Part 630, a new Subpart I is added to read as follows:

* * * * *

Subpart I—Temporary Leave Transfer Program

Sec.

Subpart I—Temporary Leave Transfer Program

§ 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a temporary leave transfer program under which the unused accrued annual and sick leave of one agency officer or employee may be transferred for use by another agency officer or employee in not more than three cases of personal emergency.

(b) *Applicability.* This subpart applies to officers and employees to whom Subchapter I of Chapter 63 of Title 5, United States Code, applies.

§ 630.902 Definitions.

"Employing agency" means the agency in which the leave recipient is employed.

"Leave donor" means an employee of an employing agency whose voluntary written request for transfer of annual or sick leave to the leave accounts of a leave recipient is granted by the employing agency.

"Leave recipient" means an employee of an employing agency who has a personal emergency and is selected to receive annual or sick leave from the leave accounts of one or more leave donors.

"Personal emergency" means a medical or family emergency or other hardship situation that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

§ 630.903 Nomination of potential leave recipients.

(a) Federal agencies employees, and other interested parties may submit nominations of potential leave recipients to the Office of Personnel Management. Such nominations must be received on or before April 30, 1987.

(b) All nominations shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, employing agency, position title, and grade or pay level of the potential leave recipient; and

(2) A brief description of the nature, severity, and anticipated duration of the medical, family or other hardship situation affecting the potential leave recipient.

§ 630.904 Selection of leave recipients.

In consultation with the employing agency of the potential leave recipient and following receipt of any additional information it may require, the Office of Personnel Management may select not more than three leave recipients for participation in the temporary leave transfer program from among the potential leave recipients nominated under § 630.903. The selections of the Office are final, and there is no administrative or judicial appeal of the selections.

§ 630.905 Transfer of annual and sick leave.

(a) An employee of an employing agency (or organizational unit thereof, as determined by the employing agency) may voluntarily request, in writing, that a specified number of hours of his or her accrued annual and/or sich leave be transferred from his or her annual or sick leave account to the annual or sick leave account, respectively, of a leave recipient.

(b) Under procedures established by the employing agency, the employing agency may transfer all or any portion of the annual leave requested under paragraph (a) of this section to the annual leave account of the leave recipient, and all or any portion of the sick leave requested under paragraph (a) of this section to the sick leave account of the leave recipient.

(c) Annual and/or sick leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after October 30, 1986, or a later date fixed by the employing agency as the beginning of the period of personal emergency for which LWOP or advanced annual or sick leave was granted.

§ 630.906 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.905 in the same manner and for the same purposes as if he or she had accrued the annual leave under section 6303 of Title 5, United States Code. However, annual leave that accrues to the account of the leave recipient shall be used before any transferred annual leave.

(b) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by Chapter 63 of Title 5, United States Code, Part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under section 6303 of Title 5, United States Code, except that transferred annual leave may accumulate without regard to the limitation imposed by section 6304(a) of Title 5, United States Code.

(c) Transferred annual leave remaining to the credit of a leave recipient when the leave recipient's employment terminates may not be transferred to another Federal agency or included in a lump-sum payment under section 5551 or 5552 of Title 5, United States Code, and may not be available for recredit under section 6306 of that title upon reemployment by the Federal Government.

§ 630.907 Use of transferred sick leave.

(a) A leave recipient may use sick leave transferred to his or her sick leave account under § 630.905 in the same manner and for the same purposes as if he or she had accrued the sick leave under section 6307 of Title 5, United States Code. However, sick leave that accrues to the account of the leave recipient shall be used before any transferred sick leave.

(b) The approval and use of transferred sick leave shall be subject to all of the conditions and requirements imposed by Chapter 63 of Title 5, United States Code, Part 630 of this chapter,

and the employing agency on the approval and use of sick leave accrued under section 6307 of Title 5, United States Code.

(c) Transferred sick leave remaining to the credit of a leave recipient when the leave recipient's employment by the employing agency terminates may not be transferred to another Federal agency or recredited under § 630.502 upon reemployment by the Federal Government and may not be included in the leave recipient's total service for retirement annuity computation purposes under section 8339(m) of Title 5, United States Code.

§ 630.908 Termination of personal emergency.

(a) The personal emergency affecting a leave recipient shall terminate when—

(1) The employing agency determines that the personal emergency no longer exists; or

(2) The leave recipient's employment by the employing agency terminates.

(b) The employing agency shall continuously monitor the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred annual or sick leave after the personal emergency ceases to exist.

(c) When the personal emergency affecting a leave recipient terminates, the employing agency may not grant any further requests for transfer of annual or sick leave to the leave accounts of the leave recipient.

§ 630.909 Restoration of transferred annual and sick leave.

(a) Under procedures established by the employing agency, any transferred annual or sick leave remaining to the credit of a leave recipient when the personal emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the accounts of the leave donors.

(b) Transferred annual leave restored to the account of a leave donor under paragraph (a) of this section before the beginning of the third biweekly pay period before the end of the leave year shall be subject to the limitation imposed by section 6304(a) of Title 5, United States Code.

(c) Transferred annual leave restored to the account of a leave donor under paragraph (a) of this section after the beginning of the third biweekly pay period before the end of the leave year shall not be subject to the limitation imposed by section 6304(a) of Title 5, United States Code, until the end of the leave year following the leave year in which the transferred annual leave was restored.

§ 630.910 Records and reports.

The Office of Personnel Management may require employing agencies to maintain records and report pertinent information to the Office concerning the administration of the temporary leave transfer program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave transfer program.

§ 630.911 Termination of temporary leave transfer program.

(a) The temporary leave transfer program shall terminate upon submission of a report to Congress on voluntary leave transfer policy.

(b) If the temporary leave transfer program terminates before the termination of the personal emergency affecting a leave recipient, any annual or sick leave transferred to the accounts of the leave recipient before the termination of the temporary leave transfer program shall remain available for use by the leave recipient until the termination of the personal emergency.

[FR Doc. 87-7060 Filed 3-30-87; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 831

Retirement Survivor Annuity Benefit Elections (Medical Examination)

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations concerning election of survivor annuity benefits. This regulation will require a retiree to pay the cost of a medical examination when electing to provide a survivor benefit to an individual who has an insurable interest in the retiree. This survivor benefit election is provided for under section 8339(k)(1) of Title 5, United States Code.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: Rod Meader, (202) 632-5582.

SUPPLEMENTARY INFORMATION: On June 13, 1986, OPM published a proposed regulation (51 FR 21560) to require a retiree to pay the cost of a medical examination when electing a survivor benefit for a person having an insurable interest in the retiree. We received eight comments on the proposed regulation—one from an agency, one from a professional organization, two from employee organizations, and four from individuals. One commenter agreed with the proposed regulation. The remainder of the commenters registered their opposition to the proposed regulation.

Some of the commenters appear to be confused about the survivor benefit elections available under the civil service retirement law. There are two types of survivor benefit elections that a retiree can make. One is an election to provide a survivor benefit for a spouse or former spouse. The other is an election to provide a survivor benefit to a person having an insurable interest in the retiree. Only those retirees wishing to make an insurable interest-type survivor election are required to undergo a medical examination.

Other commenters objected in principle to requiring a retiree to pay for the medical examination. This change to require a retiree to pay for a medical examination is consistent with existing practice for other personnel management actions requiring medical examinations. It is a well established principle that applicants for retirement bear the burden of proof on all questions concerning entitlement. Thus, they must show that they are entitled to the benefit requested. Because the applicant has this responsibility, he or she should also bear the cost of providing the necessary evidence.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Fire fighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management,
James E. Colvard,
Deputy Director.

Accordingly, OPM is amending 5 CFR Part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart F of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347

2. In § 831.606, paragraph (d) is revised to read as follows:

§ 831.606 Election of insurable interest annuity.

* * * * *

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement; submit evidence to demonstrate that he or she is in good health; and arrange and pay for the medical examination that shows that he or she is in good health. A report of the medical examination, signed and dated by a licensed physician, must be furnished to OPM on such forms and at such time and place as OPM may prescribe through the Federal Personnel Manual system or other issuances.

[FR Doc. 87-7034 Filed 3-30-87; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program; Revised Timeframes for Conversion Purposes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Federal Employeers Health Benefits (FEHB) Program regulations to amend the timeframe for conversion to nongroup coverage when an FEHB enrollment is terminated. This change will ensure that all employees have a sufficient amount of time to convert, regardless of whether or not receipt of the conversion notice was delayed.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632-4634.

SUPPLEMENTARY INFORMATION: On October 16, 1986, OPM published proposed regulations in the **Federal Register** (51 FR 36810) to amend the timeframe for conversion to nongroup coverage when an FEHB enrollment is terminated. These regulations require agencies to produce a notice of the right to convert and give it to the individual within 60 days of the date the enrollment terminates. They also require that individuals whose group coverage terminates request conversion information from the carrier within 31 days from the date of the notice but no later than 91 days from the date the enrollment terminates. The regulations include a mechanism for belated conversion if the individual is unable to request conversion information within the required timeframe.

We received written comments from a Federal agency, two FEHB carriers, and a national association representing certain carriers. All were generally in favor of the new provision requiring agencies to issue a conversion notice and suggested that we issued further instructions on the new procedures required by these regulations. We plan to provided agencies and FEHB carriers with additional guidance in the near future. We also plan to continue in our efforts to remind individuals that they have a conversion right if their enrollment terminates, and to remind agencies of their obligation to issue a conversion notice upon termination of an enrollment.

One commenter expressed concern that extending the time limit for conversion from 15 days to 31 days of the date of the notice and from 75 days to 91 days of the date the enrollment terminates could increase the carriers' administrative burden and conversion risk. We do not expect that the additional time provided by the new regulation will significantly affect the carriers.

This carrier is also concerned that the provision concerning belated conversion opportunities will require greater carrier involvement with employing agencies to verify enrollee statements. Because these new rules place the burden of proof on the individual, we do not anticipate a great increase in the need for carrier-agency contact.

The carrier also requests that we include regulatory guidance on the legal; recourse for individuals if they are dissatified with a final decision by OPM. Because this information is already provided in § 890.107, we do not believe it is necssary to repeat it in these regualtions.

Another commenter supports the provisions making a belated conversion contract retroactive to the day after the end of the 31-day temporary extension of group coverage. However, this commenter is concerned that § 890.401(c)(3) could create an additional period of group coverage of up to 6 months if the agency fails to provide notice of the right to convert within 60 days of the date the enrollement terminates. The new rules do not change the existing 31-Day temporary extension of *group* coverage, which ends on the 32d day after the enrollment terminates (except for those confined to a hospital on the 31st day (see § 890.401(b))). Group coverage does *not* continue through the date that the carrier makes a determination on the individual's eligibility to convert. If the carrier permits conversion, the individual is responsible for full payment of the individual conversion policy beginning on the 32d day after the enrollment terminates and the carrier will pay claims for that period according to the provisions of the conversion contract.

This commenter is also concerned that prepaid plans face a serious risk of loss because alleged FEHB members who lose group coverage could receive care for up to 6 months as a result of an unresolved conversion option notification. The carrier fears that if these individuals neither convert nor pay for care, the plan could suffer financially, and suggests that carriers who experience an unusual amount of loss be permitteed to negotiate a compensatory loading to future rates. Rather than a loading against the Federal group's rates, which would penalize the entire Federal group covered by a contract, we believe it would be more equitable for carriers to pursue recovery against those few individuals who might continue to use their group coverage even though their enrollment has terminated. We anticipate that these regulations, which for the first time are *requiring* agencies to issue a notice of termination of group coverage and the right to convert to nongroup coverage within a specific timeframe, will help reduce the number of cases in which agencies fail to do so. (Prior to this regulation, FPM guidance merely instructed agencies to issue an SF 2810 upon termination of an enrollment.)

Two commenters believe that 60 days is too long a time period to give agencies to produce a notice of termination and the right to convert. One recommended that we require agencies to give enrollees this notice on the day the enrollment terminates, and the other recommended that we require them to give enrollees the notice within 15 days of the enrollment termination date. While we agree with these recommendations in principle, we must consider the Federal Government's uniqueness as an employer. Although many non-Federal organizations may be able to issue immediate conversion notices, most of these have more centralized personnel services. Within the Federal Government, however, employees may be stationed in different cities or countries from their personnel offices. Furthermore, agency personnel offices and payroll offices are not always in the same location. In many cases, the office that issues SF 2810 is not notified that one is needed until long after the enrollment has terminated. We recognize the necessity of the prompt issuance of conversion notices and will

emphasize this point in our additional guidance to agencies.

Another FEHB insurance carrier telephoned to request that we distinguish the initial loss of group coverage from the end of the 31-day temporary extension of group coverage that is provided when an enrollment terminates. We have therefore substituted the words "termination of enrollment" for "loss of group coverage" in paragraphs (c) (1), (2), and (3) of § 890.401. "Termination of enrollment" refers to the date the individual loses eligibility to participate in the FEHB Program, *not* to the end of the 31-day temporary extension of group coverage. We have also made a minor clarifying change to § 890.401)c)(2).

In addition to amending the conversion timeframe, OPM is adding paragraph (g) to § 890.306. This paragraph was formerly designated as paragraph (f) and was inadvertently deleted in a previous revision to the regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office Of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.201, paragraph (a)(4) is amended by revising the third sentence and adding a sentence immediately after the third sentence to read as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) * * *

(4) * * * When an employing office gives an employee, annuitant, or former spouse written notice of his or her privilege of conversion, the carrier shall permit conversion at any time before 31 days after the date of notice, or 91 days after the enrollment is terminated, whichever is earlier. Belated conversion opportunities as provided in § 890.401(c) shall also be, permitted by the carrier. * * *

* * * * *

3. Section 890.306 is amended by adding a new paragraph (g) to read as follows:

§ 890.306 Effective dates.

* * * * *

(g) *Generally.* The effective date of any other enrollment or change of enrollment is the first day of the first pay period that begins after the health benefits registration form is received by the employing office and that follows a pay period during any part of which the employee or annuitant is in pay or annuity status except that enrollment under § 890.301(s) may be effective (1) on a prospective basis, namely the first day of the month after the date of receipts by OPM of registration forms; or (2) on a retroactive basis, namely the date of restoration of survivor annuity or October 1, 1976, whichever is later.

4. Section 890.401 is amended by adding a new paragraph (c) to read as follows:

§ 890.401 Temporary extension of coverage and conversion.

* * * * *

(c)(1) The employing agency must notify the employee, annuitant, or former spouse of the termination of the enrollment and of the right to convert to an individual policy within 60 days of the date the enrollment terminates.

(2) The individual whose enrollment terminates must request conversion information from the losing carrier within 31 days of the date of the agency notice of the termination of the enrollment and of the right to convert.

(3) When an agency fails to provide the notification required in paragraph (c)(1) of this section within 60 days of the date the enrollment terminates, or the individual fails for other reasons beyond his or her control to request conversions as required in paragraph (c)(2) of this section, he or she may request conversion to an individual policy by writing directly to the carrier. Such a request must be filed within 6 months after the individual became eligible to convert his or her group coverage and must be accompanied by verification of termination of the enrollment; e.g., an SF 50, showing the individual's separation from the service. In addition, the individual must show that he or she was not notified of the termination of the enrollment and of the right to convert, and was not otherwise aware of it, or that he or she was unable, for cause beyond his or her control, to convert. The carrier will determine if the individual is eligible to convert; and when the determination is affirmative, the individual may convert within 31 days of the determination. If the determination by the carrier is negative, the individual may request a review of the carrier's determination from OPM.

(4) When an individual converts his or her coverage anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the temporary extension of group coverage ended. The individual must pay the premiums due for the retroactive period.

(5) An individual who fails to exercise his or her rights to convert to an individual policy within 31 days after receiving notice of the right to convert from the carrier is deemed to have declined the right to convert unless the carrier, or, upon review, OPM determines the failure was for cause beyond his or her control.

[FR Doc. 87–7035 Filed 3–30–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–18–AD; Amdt. 39–5593]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, equipped with Rolls Royce RB 211–535E4 engines, which requires inspection and repair, if necessary, of the thrust reverser C-duct thermal blankets. This amendment is prompted by reports that the blankets have exhibited degradation in the form of ballooning, holing, and discoloration in service. This condition, if not corrected, could result in holing or missing sections of the blanket in the

upper 45 degree section, which would compromise the fire integrity of the C-ducts.

EFFECTIVE DATE: April 16, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Co., P.O. Box 3707, Seattle, Washington 98168. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The inner surface of the Rolls Royce RB211-535E4 engine thrust reverser C-duct is lined with a thermal blanket which protects the bonded structure of the C-duct from the heat generated by the engine and provides a fire barrier in the upper 45 degrees of each C-duct half. The blanket is manufactured from two sheets of nickel chromium steel sandwiching a sheet of fiber filler insulating material. In service, the blanket has exhibited degradation in the form of ballooning, holing, and discoloration. Holing or missing sections of the thermal blanket in the upper 45 degree section compromises the fire integrity of the C-ducts.

The FAA has reviewed and approved Boeing Service Bulletin 757-78-0010, dated December 23, 1986, which describes inspection and repair procedures of the C-duct thermal blankets.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and repair or replacement, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Service experience indicates that the normal inspection interval for inspecting the C-duct thermal blankets may be too long, since it allows degradation of the blankets to progress to an unsafe condition. The FAA is considering further action to require reducing the interval for normal maintenance inspections.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes equipped with Rolls Royce RB211-535E4 engines, as listed in Boeing Service Bulletin 757-78-0010, dated December 23, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To maintain the fire integrity of the thrust reverser C-ducts, accomplish the following within the next 250 flight hours after the effective date of this AD:

A. Inspect and repair, if necessary, the thermal blanket in the upper 45 degree section of the C-ducts, as described in Boeing Service Bulletin 757-78-0010, dated December 23, 1986, or later FAA-approved revision. Any damage to the thermal blanket (such as holes, splits, and tears) must be repaired prior to further flight.

B. Inspect and repair, if necessary, the thermal blanket in the lower section of the C-ducts and engine components, as described in the Boeing Service Bulletin 757-78-0010, dated December 23, 1986, or later FAA-approved revisions. Any damage discovered must be repaired within the next 250 flight hours.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or repair required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 16, 1987.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-7017 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-94-AD; Amdt. 39-5594]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes Equipped With Dynamic Controls Corporation Part Numbers 11035-2 and 11035-3

AGENCY: Federal Aviation, Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L-1011-385 series airplanes, which requires modification of the passenger oxygen initiator sequencer timer switches (sequencers). This amendment is prompted by a recent incident wherein the passenger oxygen system on an L-1011-385-3 airplane failed to activate, automatically and manually, after the loss of cabin pressure during descent. The failure was attributed to two shorted transient suppression capacitors in the sequencer. This condition, if not corrected, could result in depriving passengers of needed oxygen.

EFFECTIVE DATE: May 5, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region,

17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires modification of the passenger oxygen initiator sequencer timer switches, was published in the **Federal Register** on May 14, 1986 (51 FR 17650) and amended on November 3, 1986 (51 FR 39865). The second comment period for the proposal closed on December 22, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received. The commentor had no objections to the proposed rule.

During the second comment period, Lockheed informed the FAA and the L-1011 operators that the modified sequencers are identified by the word "MOD 2," but this was incorrectly identified as "MOD 1" in Lockheed Service Bulletin (S/B) 093-35-041, Revision 2, which was referenced in the amended NPRM. Thereafter, Lockheed issued S/B 093-35-041, Revision 3, dated November 6, 1986, with the correct modification identification. Since Revisions 2 and 3 of S/B 093-35-041 are identical except for the modification identification, the AD has been revised to reflect the P/N's 11035-2 and -3 sequencers in accordance with Part II of the Accomplishment Instructions of Lockheed S/B 093-35-041, Revision 3, instead of Revision 2. This is merely an editorial change and will impose no additional economic burden on any operator.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously noted.

It is estimated that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per Lockheed Model L-1011-385-1 series airplane and 14 manhours per Lockheed Model L-1011-385-3 series airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model L-1011-385 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, equipped with Dynamic Controls Corporation oxygen initiator sequence timer switch(es), P/N's 11035-2/-3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent malfunction of the passenger oxygen system due to dormant shorted electromagnetic interference filter capacitors in the oxygen initiator sequencer timer switch(es), accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), modify P/N's 11035-2 and -3 oxygen initiator sequencer timer switches in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093-35-041, Revision 3, dated November 6, 1986, or later revisions approved by the Manager, Los Angles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 5, 1987.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-7018 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-122-AD; Amdt. 39-5595]

Airworthiness Directives; Lockheed-California Company Model L-188A and L-188C Airplanes

AGENCY: Federal Aviation, Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires a modification to the wing air start access door of Lockheed L-188A and L-188C airplanes. This action is prompted by numerous reports of an open wing air start access door. This condition, if not corrected, can result in severe structural vibration during flight. This AD requires a modification of the wing air start access door to reduce it in size and, thus, reduce the vibration effect of an open door during flight.

EFFECTIVE DATE: May 5, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L-188, Commercial Support Contracts, Dept. 63-11 Unit 33. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L,

FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require modification of the wing air start access door of Lockheed L–188A and L–188C airplanes was published in the **Federal Register** on June 30, 1986 (51 FR 23557).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The first commenter, the manufacturer, suggested that the statement, ". . . numerous reports of severe structural vibration . . .," which was used in the preamble to the Notice, was incorrect, and questioned the FAA's source of data. In response, the FAA notes Lockheed's Electra Operating Information, dated May 30, 1985, which described "strong airplane vibration and buffeting," "heavy vibration," and "a number of previously unreported vibration/buffeting incidents of a similar nature." In addition, the FAA has received reports from one airline stating that several severe vibration problems have occurred; this situation resulted in the decision of that airline to modify the wing air start access door on the Model L–188 series airplanes in its fleet. From this information the FAA has determined that the statements used in the preamble to the Notice are justified.

The manufacturer also suggested that the AD should apply only to airplanes which have the P/N 826035 door installed. The FAA does not concur with the commenter's suggestion. The FAA has determined that there may be other doors in service which must be modified as required by the AD.

The other commenter, the National Transportation Safety Board, supported the proposed action.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model L–188A and L–188C airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L–188A and L–188C airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent airframe vibration from an open wing air start access door, accomplish the following:

A. Within 500 hours time-in-service after the effective date of this AD, modify the air start door in accordance with Lockheed Drawing 842715, dated February 18, 1986, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to accomplish the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L–188, Commercial Support Contracts, Dept. 63–11, Unit 33. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 5, 1987.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–7019 Filed 3–30–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Incremental Pricing Regulations; Natural Gas Policy Act; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357–8500.

Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1987; Order of the Director, OPPR

Issued: March 25, 1987.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to the mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month April, 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for April, 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE 1.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Calendar Year 1986												
Incremental Pricing Threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530
NGPA section 102 Threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.403	4.431
NGPA section 109 Threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609
130% of No. 2 Fuel Oil in New York City Threshold	7.370	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020	3.320	3.240
Calendar Year 1987												
Incremental Pricing Threshold	$2.536	$2.541	$2.544	$2.547								
NGPA section 102 Threshold	4.459	4.478	4.497	4.516								
NGPA section 109 Threshold	2.617	2.620	2.623	2.626								
130% of No. 2 Fuel Oil in New York City Threshold	4.090	4.660	4.620	4.120								

[FR Doc. 87-7043 Filed 3-30-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 178

[T.D. 87-43]

Merchandise Entry; Customs Regulations Amendments Concerning Special Summary Steel Invoices

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding several articles to the list of steel products subject to the requirements of the Special Summary Steel Invoice (SSSI). The U.S. Trade Representative has negotiated Voluntary Restraint Agreements (VRA) with several countries. These VRA's dictate that basic steel products from these countries cannot be entered into the U.S. for consumption without an export license. Therefore, the Department of Commerce has requested that Customs add fabricated structurals, wire rope, wire strand, and rigid conduit to the list of articles subject to the requirements of the SSSI to facilitate the collection of statistical data necessary for monitoring compliance with the VRAs.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: William Wagner, Commercial Compliance Division, (202-566-8121).

SUPPLEMENTARY INFORMATION:

Background

Section 141.86, Customs Regulations (19 CFR 141.86), sets forth the general information required by the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), to be on each invoice of imported merchandise. In addition to this information, § 141.89, Customs Regulations (19 CFR 141.89), lists certain classes of merchandise for which additional invoice information is required. One such class of merchandise is certain steel products imported in shipments with an aggregate purchase price of $10,000 or over, or if from a contiguous country, $5,000 or over, listed in § 141.89(b)(2).

The extra information required concerning steel products is provided by completing the Special Summary Steel Invoice (SSSI) (Customs Form 5520). The SSSI must be submitted to Customs in duplicate at the time of filing the entry summary for each shipment of steel determined by the district director to be subject to § 141.89(b). The information which must be supplied on a SSSI, such as date of the sales agreement and price data, is used to administer and enforce antidumping laws (19 U.S.C. 1671 *et seq.*), as well as compliance with Voluntary Restraint Agreements (VRA).

The U.S. Trade Representative has negotiated VRAs with Australia, Finland, South Africa, Spain, Brazil, Mexico, the European Community, South Korea, Czechoslovakia, East Germany, Hungary, Japan, Venezuela, Poland, Romania and Portugal. The agreements dictate that basic steel products from these countries cannot be entered into the U.S. for consumption unless accompanied by a valid export certificate. Therefore, the International Trade Administration of the Department of Commerce has requested that Customs extend SSSI coverage to include fabricated structurals, wire rope, wire strand, and rigid conduit. Therefore, Customs is adding these 4 articles to the other 32 articles of steel listed in § 141.89(b)(2) that require a SSSI for shipments with an aggregate purchase price of $10,000 or over, or if from a contiguous country $5,000 or over. The necessity for filing a SSSI is determined by what article of steel is being shipped and what its purchase price is; the country where the shipment originated is not a factor. Currently, Customs must provide copies of actual invoices to Commerce to account for these products, a task requiring additional work for Customs import specialists. The addition of these steel commodities to the list of articles subject to the requirements of the SSSI would greatly ease the process of collecting the necessary statistical information.

Discussion of Comments

Five comments were received in response to the notice published in the **Federal Register** on August 7, 1986 (51 FR 28390), proposing this change. The commenters agreed that the amendment will facilitate the collection of statistical data necessary for monitoring compliance with VRA's and did not recommend any change.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendment

will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information requirements contained in § 141.89(b) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB control number 1515–0083.

Drafting Information

The principal author of the document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 141

Customs duties and inspections, Imports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

Amendments to the Regulations

Parts 141 and 178, Customs Regulations (19 CFR Parts 141, 178), are amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart G also issued under 19 U.S.C. 1505. Section 141.89 also issued under 19 U.S.C. 1202 (Gen. Hdnote 11), 1481.

2. Section 141.89(b)(2) is amended by adding the following commodities in proper numerical order to the list of articles of steel subject to special invoice requirements:

§ 141.89 [Amended]

* * * * *

(b) * * *

(2) * * *

(38) Fabricated structurals.

(43) Wire rope.

(44) Wire strand.

(51) Rigid conduit.

(**Note.**—Although not in sequence with existing numbers in § 141.89(b)(2), the numbers listed are those assigned to these articles by the American Iron and Steel Institute.)

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR Section	Description	OMB control No.
	* * * * *	
§ 141.89(b)	Information on steel articles subject to special invoice requirements.	1515–0083
	* * * * *	

William von Raab,

Commissioner of Customs.

Approved: March 12, 1987.

Francis A. Keating II,

Assistant Secretary of the Treasury.

[FR Doc. 87–7008 Filed 3–30–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 84N–0025]

Incorporation by Reference; Updating of Text; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting an error in § 178.3910 (21 CFR 178.3910) that was inadvertently introduced into that regulation in 1984. At that time to comply with 1 CFR Part 51, FDA amended the text of its regulations on color additives and food with regard to materials incorporated by reference in those regulations (49 FR 10087; March 19, 1984). In modifying § 178.3910, FDA converted a temperature listed in the regulation from fahrenheit to centigrade. However, in doing so, FDA inadvertently listed that temperature as 240 °C, rather than as 24 °C. This document corrects that error.

DATES: Effective March 31, 1987; written objections by April 30, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John E. Thomas, Center for Food Safety and Applied Nutrition (HFF–314), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0232.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1977 (42 FR 14633), FDA published a final rule (21 CFR 178.3910(a)(4)(i)(*a*)) that established specifications for light petroleum hydrocarbons that may be used as surface lubricants in the manufacture of metallic articles that contact food. The specifications included an initial boiling point in degrees fahrenheit, i.e., 75 °F minimum. In the **Federal Register** of March 19, 1984 (49 FR 10087), FDA amended 21 CFR 178.3910(a)(4)(i)(*a*) by converting the initial boiling point specification from degrees fahrenheit to degrees centigrade. In that final rule, however, FDA inadvertently listed this initial boiling point as 240 °C, instead of as 24 °C.

The agency is amending 21 CFR 178.3910(a)(4)(i)(*a*) by correcting the initial boiling point specification for light petroleum hydrocarbons from 240 °C to 24 °C.

Any person who will be adversely affected by this regulation may at any time on or before April 30, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents

shall be submitted and shall be indentified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

§ 178.3910 [Amended]

2. Section 178.3910 *Surface lubricants used in the manufacture of metallic articles* is amended in paragraph (a)(4)(i)(*a*) by changing "240 °C" read "24 °C."

Dated: March 26, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-7011 Filed 3-30-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8099]

Allocations of Loss and Deduction Attributable to Nonrecourse Debt

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, September 9, 1986 (51 FR 32061) as Treasury Decision 8099. The rules relate to allocations of loss and deduction attributable to nonrecourse debt of the partnership.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz, 202–566–3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections conform the regulations to section 213(d) of the Tax Reform Act of 1976.

Need for Corrections

As published, Treasury Decision 8099 contains several typographical errors. This document corrects those errors.

Corrections of Publication

PART 1—[AMENDED]

Accordingly, the publication of final regulations (T.D. 8099), which was the subject of FR Doc. 86–20100, is corrected as follows:

§ 1.704–1 [Amended]

Paragraph 1. In § 1.704–1, paragraph (b)(5), part (iv) of Example (20), page 32065, first column, the second sentence of part (iv) is corrected by adding the language "interest expense of $80,000," immediately following the language "operating expenses of $10,000,".

Par. 2. In § 1.704–1, paragraph (b)(5), part (iii) of Example (22), page 32067, second column, in the third sentence of part (iii) the language "distributes $3,333 of cash to each partner." is corrected to read "distributes $5,000 of cash to each partner."

Par. 3. In § 1.704–1, paragraph (b)(5), part (iii) of Example (22), page 32067, third column, in the seventh sentence of part (iii) the language "Nevertheless, pursuant to the second sentence" is corrected to read "Nevertheless, pursuant to the third sentence".

Par. 4. In § 1.704–1, paragraph (b)(5), part (iv) of Example (22), page 32068, first column, in the last sentence the language that reads "the partnership's third taxable year" is corrected to read "the partnership's fourth taxable year".

Par. 5. On page 32070, second column, instructional paragraph number 19, the language "Paragraph (b)(3)(iii)" is corrected to read "Paragraph (b)(3)(ii)".

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 87-7026 Filed 3-30-87; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1

[T.D. 8115]

Unisex Annuity Tables; Corrections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulation.

SUMMARY: This document contains corrections to Treasury Decision 8115, which was published in the **Federal Register** for Friday, December 19, 1986 (51 FR 45690). T.D. 8115 issued final regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco, 202–566–3238 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income under section 72 of the Internal Revenue Code of 1954.

Need For Corrections

As published, Treasury Decision 8115 contains a typographical error on page 45692, third column, in line 16 from the bottom of the page.

A second error is located on page 45701 second column, in lines 13 and 14 from the bottom of the page.

Corrections of Publication

PART 1—[AMENDED]

Accordingly, the publication of Treasury Decision 8115, which was the subject of FR Doc. 86–28455, is corrected as follows:

§ 1.72–4 [Corrected]

Paragraph 1. In § 1.72–4, paragraph (d)(3)(ii), page 45692, third column, in line 16 from the bottom of the page, the reiteration of the word "and" is removed.

§ 1.72–6 [Corrected]

Par. 2. In § 1.72–6, paragraph (d)(3)(iii)(D), page 45701, second column, in lines 13 and 14 from the bottom of the page, the language "this section" is removed and the reference "§ 1.72–7" is added in its place.

Donald E. Osteen,

Director, Legislation and Regulations Division

[FR Doc. 87-7027 Filed 3-30-87; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 51

[T.D. 8103]

Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Definition of "Removed From the Premises"

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** for Tuesday, September 23, 1986 (51 FR 33741) as Treasury Decision 8103. The rules concern the definition of "removed from the premises" for purposes of the windfall profit tax.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, 202–566–3297.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections clarify when domestic crude oil is removed from the premises under the Crude Oil Windfall Profit Tax Act of 1980. The rules provide the public with guidance needed for determining when the taxable event occurs for purposes of the imposition of the windfall profit tax under section 4986 of the Internal Revenue Code.

Need for Corrections

As published, Treasury Decision 8103 contains two typographical errors. This document corrects those errors.

Corrections of Publication

Accordingly, the publication of Treasury Decision 8103, which was the subject of FR Doc. 86–21439, is corrected as follows:

PART 51—[AMENDED]

Paragraph 1. On page 33743, first column, in the authority citation for Part 51, the reference to "§ 51.4966–1(d)" is corrected to read "§ 51.4996–1(d)".

§ 51.4996–1 [Amended]

Par. 2. In § 51.4996–1, paragraph (d)(3)(iv), page 33744, third column, the parenthetical citation that reads "(47 FR 50275) 1982))" is corrected to read "(47 FR 50215 (1982))".

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 87–6718 Filed 3–30–87; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–249; correction]

Technical Amendments; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, correction.

SUMMARY: This document makes a correction in rule document 87–4000 beginning on page 5954 in the issue of Friday, February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Lori Weins, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566–7626

PART 9—[AMENDED]

On page 5959, in the second column in amendatory instruction 31, "Section 9.75(c)(43)" should read "Section 9.74(c)(43)".

Signed: March 23, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87–6838 Filed 3–30–87; 8:45 am]

BILLING CODE 4810–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Filing of Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Commission is clarifying § 1601.13(a) of its procedural regulations. Subparagraph (a)(3) concerning the filing of charges which are apparently untimely under state or local law is being deleted. Such charges will be filed and processed for deferral purposes in accordance with the deferral policy set forth in subparagraphs (a)(4) and (a)(5). Subparagraphs (a)(4) and (a)(5) are being revised to omit any references to the timeliness of charges under state or local law and renumbered to reflect the deletion of subparagraph (a)(3).

EFFECTIVE DATE: March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Thomas J. Schlageter, Staff Attorney, at (202) 634–6592.

SUPPLEMENTARY INFORMATION: Section 1601.13 of the EEOC's procedural regulations, entitled "Filing; deferrals to State and local agencies," was completely revised in 1981. In subparagraph (a)(3), the Commission distinguished the filing and deferral of charges which are apparently untimely under State or local law from the filing and deferral of charges which are apparently timely under State and local law. The Commission intended to communicate three things by this distinction: (1) Its interpretation of Title VII that complainants in deferral jurisdictions are entitled to the extended, 300-day, Federal filing period regardless of whether their State or local charges were timely filed, (2) its policy of securing advance waivers from State and local agencies of their rights under section 706 with respect to charges which are apparently untimely under State or local law, and (3) its practice, based upon these advance waivers, of filing such charges upon receipt. Because the Commission's intent in promulgating this subparagraph has been misconstrued, the Commission has decided to clarify the regulation by eliminating the "apparently timely" and "apparently untimely" categorizations. The Commission's deferral policy as currently set forth in § 1601.13(a) (4) and (5) is not being changed and will be applied to all charges arising in jurisdictions having a 706 agency with subject matter jurisdiction over the charges without regard to their timeliness under State or local law.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovermental relations.

Accordingly, 29 CFR Part 1601 is amended as follows:

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–12(a), unless otherwise noted.

2. Section 1601.13 is amended as follows:

a. Paragraph (a)(3) is removed.

b. Paragraphs (a)(4) introductory text, (a)(5) introductory text, and (a)(5)(ii) introductory text are revised to read as follows:

§ 1601.13 Filing; deferrals to State and local agencies.

(a) * * *

(4) Charges arising in jurisdictions having a 706 Agency with subject matter jurisdiction over the charges are to be processed in accordance with the Commission's deferral policy set forth

below and the procedures in paragraph (a)(4) of this section.

* * * * *

(5) The following procedures shall be followed with respect to charges which arise in jurisdictions having a 706 Agency with subject matter jurisdiction over the charges:

* * * * *

(ii) Such charges are deemed to be filed with the Commission as follows:

* * * * *

c. Paragraphs (a)(4) and (a)(5) are redesignated as (a)(3) and (a)(4) respectively.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 87-6954 Filed 3-30-87; 8:45 am]

BILLING CODE 6750-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 289

Availability of DoD Directives, DoD Instructions, DoD Publications, and Changes

AGENCY: Office of the Secretary, DOD.

ACTION: Amendment to final rule.

SUMMARY: This amendment is to notify interested persons that DoD 5025.1-I, "DoD Directives System Quarterly Index" has been changed to "DoD Directives System Annual Index." The Annual Index will be issued each January followed by three quarterly change installments. All previous editions of the Quarterly Index are hereby superseded. The first publication date for the Annual Index is January 1987.

SUPPLEMENTARY INFORMATION: On Thursday November 20, 1986 (51 FR 41962), the Office of the Secretary of Defense published the Availability of DoD Directives, Instruction, Publications, and Changes. Any reference to the DoD Directives System "Quarterly" Index should be changed to read "Annual" Index. All other information remain unchanged.

EFFECTIVE DATE: January 31, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Lawson, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

List of Subjects in 32 CFR Part 289

DoD Directives System issuances, Availability to the public, Freedom of Information.

PART 289—[AMENDED]

Accordingly, 32 CFR Part 289 is amended to read as follows:

1. The authority citation for Part 289 continues to read as follows:

Authority: 10 U.S.C. 133, 31 U.S.C. 483a.

§§ 289.1, 289.2, 289.3 and 289.4 [Amended]

2. In §§ 289.1 (a) and (b), 289.2(a), 289.3(a), and 289.4(b) change "DoD Directives System Quarterly Index" to read "DoD Directives System Annual Index."

March 26, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-6998 Filed 3-30-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-630-07-4111-02]

43 CFR Part 3160

Onshore Oil and Gas Operations; Correction Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: A final rulemaking revising the existing regulations on site security; noncompliance with Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation, order or notice issued thereunder; or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance and abatement, and the procedures for notice, review, or relief was published in the **Federal Register** on February 20, 1987 (52 FR 5384). Several errors resulted from the publication of the final rulemaking and are corrected as set forth below.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION:

PART 3160—[AMENDED]

§ 3163.1 [Corrected]

1. On page 5393, first column, § 3163.1(a)(3), in the third sentence, remove from where it appears the phrase "Shut-in actions or other" and replace it with the phrase "Shut-in actions for other".

§ 3163.2 [Corrected]

2. On page 5393, third column, § 3163.2(a), in the first sentence, remove the phrase "terms of any issue or permit" and replace it with the phrase "terms of any lease or permit".

§ 3163.4 [Corrected]

3. On page 5394, third column, § 3163.4, in the first sentence, remove the phrase "the 90-day period provided by § 3165.3(d)(2)" and replacing it with the phrase "the 90-day period provided by § 3165.4(e)".

§ 3163.5 [Corrected]

4. On page 5393, third column, item 18, §§ 3163.2 and 3163.3 were removed in their entirety because their provisions were incorporated into § 3163.1 of the final rulemaking. On page 5394, third column, item 22, is corrected by removing the period at the end and adding "; the citation "3163.3" is removed from where it appears in paragraphs (a) and (c) of § 3163.5 and replaced in both places with the citation "3163.1"."

§ 3165.3 [Corrected]

6. On page 5394, third column, in the heading of § 3165.3, add a comma immediately after the word "Notice", in the second sentence of paragraph (a) of § 3165.3, remove the phrase "or proposed plenalty" and replace it with the phrase "or proposed penalty", and on page 5395, first column, in the third sentence of paragraph (b) of § 3165.3, remove the phrase "supporting date may be" and replace it with the phrase "supporting data may be".

§ 3165.4 [Corrected]

7. On page 5395, third column, § 3165.4(d), in the second sentence, remove the phrase "under § 3163.3 of this title" and replace it with the phrase "under § 3163.2 of this title".

March 25, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 87-7005 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6641

[AK-960-07-4220-10; A-023175]

Alaska; Partial Revocation of Public Land Order No. 1094

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 8.08 acres of national forest land withdrawn for the Cat Island Administrative Site. This action will also classify the land as suitable for selection by the State of Alaska, if the land is otherwise available. If the land is not selected by the State it will be opened to mining.

EFFECTIVE DATE: March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5060.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571; 43 U.S.C. 1714, and by subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1094, dated March 5, 1955, which withdrew lands in the Tongass National Forest for the Cat Island Administrative Site, is hereby revoked as to the following described lands:

Tongass National Forest

Cat Island Administrative Site

Beginning at a point on the line of mean high tide, on the south shore of Cat Island, Hollis Anchorage, from which corner No. 4, U.S.S. 3150 bears N. 45°30' W., thence south, 10.00 chains; west, 12.05 chains; north 7.85 chains to a point on line of mean high tide of Hollis Anchorage from which corner No. 4, U.S.S. 3150 bears N. 30°15' W., easterly, along line of mean high tide of Hollis Anchorage to point of beginning.

The area described contains approximately 8.08 acres.

2. Subject to valid existing rights, the land described above are hereby classified as suitable for and opened to selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska, is provided a preference right of selection for the lands described above for a period of three-hundred and sixty six (366) days from the date of publication of this order, if the land is otherwise available. Any land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest and any other withdrawals of record.

4. At 10 a.m. on April 4, 1988 subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the land described in paragraph 2 above will be opened to location and entry under the United States mining laws. Appropriation of any land described in this order under the general mining laws prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local Courts.

March 19, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–6965 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 21, 22, 23, 61, 68, 73, 76, 78, 80, 90, 94, 95

[General Docket No. 86–285; FCC 87–99]

Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action creates new rules for implementing the Schedule of Charges and other provisions established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). In particular, the Order establishes new official mailing addresses and receipt locations for all applications and filings subject to fees. The Commission emphasizes that applications or filings received at the wrong location will be returned to the sender without processing. Several of the Commission's procedural rules concerning filing locations, hours of operation, and application processing policies are amended to conform with fee processing procedures. The Order also determines that only those Hearing Designation Orders adopted on or after April 1, 1987 will trigger the hearing fee requirement.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Brent Weingardt, Office of the Managing Director (202) 632–3906, or Marilyn McDermett (202) 632–5316.

SUPPLEMENTARY INFORMATION:

Supplemental Order

Adopted: March 24, 1987.

Released: March 30, 1987.

By the Commission.

1. By this action, the Commission amends its rules to conform its official mailing addresses and filing locations with the decisions made in the Report and Order in this proceeding.[1] In this Report and Order,[2] the Commission determined that the Deficit Reduction Act of 1984 required the Commission to modify its receipt locations in order to meet the cash management principles established by the law.[3] The public will continue to submit applications or other filings not requiring fees at the current locations.[4]

2. In particular, this Order completely revises § 0.401 of the rules, which sets forth the filing addresses and locations of the Commission, to clarify for the public where a particular submission may be filed. New § 0.401(a) of the rule is not meant to supersede the particular filing directives contained elsewhere in the rules. Rather, it provides the current addresses and locations that may be referenced by other rules. Therefore, except for § 0.401(b) of the rule—which mandates the locations for filing fees, the public should determine the correct location for filing any particular document by referencing those parts of the rules dealing with the particular radio service or procedure.

3. The Order establishes new official receipt locations for chargeable submissions. Mass media and common carrier applications and filings will continue to be accepted for filing at the Commission's headquarters in Washington, DC. Applications and filings requiring fees in these services may be either mailed or hand-delivered to the new locations set forth in § 0.401(b). Equipment approval applications, now sent to the Commission's laboratory in Columbia, Maryland, will be accepted for filing only at the Washington, DC, headquarters. Private radio applications for which a fee is required, now sent to the Commission's office in Gettysburg,

[1] The Order makes several other technical changes and clarifications to the rules to conform them with the fee collection procedures established in this proceeding.

[2] *Report and Order* in General Docket 86–285, 2 FCC Rcd. 897 (1987), 52 FR 5285 (February 20, 1987).

[3] *Report and Order* at paragraph 25.

[4] The mailing address for the Commission's laboratory was recently changed and the change is reflected in this Order.

Pennsylvania, will be accepted for filing only by the Treasury Department's lockbox bank in Pittsburgh, Pennsylvania. Submissions to this location may be either mailed or hand-delivered. Land mobile applications requiring frequency coordination should continue to be submitted first to the appropriate frequency coordinator. The frequency coordinator will in turn forward the application to the lockbox bank, or to the Commission as appropriate, after coordination is completed and the statutory fee, if required, is attached.[5] (See §§ 1.1102 through 1.1105 of the rules for the list of applications and filings requiring fees.)

4. We wish to remind the public that under current policies applications and other filings received at the wrong location will be returned to the sender without processing. For purposes of determining receipt dates and conformance with filing deadlines, the submission will not be considered received by the Commission until received at the designated location.

5. This Order also modifies several other procedural rules concerning filing locations, Commission hours of operation, and application processing policies. Secton 0.11 is amended to permit the Secretary to designate deputy custodians of documents at any of the Commission's locations, and, § 0.403 of the rules is modified to permit certain of the Commission's filing locations to maintain varied hours of operation. A technical amendment is made to § 1.4 to indicate that a "holiday" occurs, for the purposes of extending filing deadlines, whenever that particular Commission office closes prior to the published time of its operations. Language is added to clarify that a "holiday," as defined by § 1.4(d), may occur at one or more of the Commission's locations and not at others.[6] In addition, § 1.959 is clarified to indicate that returned private radio applications that are resubmitted to the Private Radio Bureau later than the established time frames will require a new fee. Sections 90.360 and 90.611 of the rules are also clarified to indicate that private radio applications requiring fees will be processed in the order of receipt at the Pittsburgh filing location. Several other rules are amended to cross-reference the filing locations listed in § 0.401(b). Finally, we wish to make clear which hearing designation orders (HDOs) will require fees during this transition period.[7] No hearing charge is payable where the HDO designating pending applications for comparative hearing is adopted by the Commission, or the bureau acting on delegated authority, prior to April 1, 1987.

6. Because these amendments only concern matters of agency organization and procedure, compliance with the notice and comment procedure of the Administration Procedure Acts is not required.[8] Furthermore, because these are nonsubstantive rule changes, the Administrative Procedure Act requirement that rules be published thirty days before they become effective is inapplicable.[9]

7. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.[10]

8. Accordingly, *it is hereby ordered that,* pursuant to authority contained in section 5002(e) of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, and in sections 4(i), 4(j), 8(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 158(f) and 303(r), Parts 0, 1, 21, 22, 23, 61, 68, 73, 76, 78, 80, 90, 94, and 95 of the Commission's rules *are amended* as set forth below. These rules and regulations are effective as of April 1, 1987 in order for the Commission to meet the congressional mandate to collect fees no later than April 2, 1987.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 21

Communications common carriers.

47 CFR Part 22

Communications common carriers.

47 CFR Part 23

Communications common carriers.

47 CFR Part 61

Tariffs.

47 CFR Part 68

Communications equipment.

47 CFR Part 73

Radio broadcasting.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television relay service.

47 CFR Part 80

Radio.

47 CFR Part 90

Common carriers.

47 CFR Part 94

Operational fixed microwave radio.

47 CFR Part 95

Radio.

Rule Amendments

47 CFR Parts 0, 1, 21, 22, 23, 61, 68, 73, 76, 78, 80, 90, 94, and 95 are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 0.11 is amended by revising paragraph (b) to read as follows:

§ 0.11 Functions of the office.

* * * * *

(b) The Secretary is the official custodian of the Commission's documents and shall have authority to appoint deputies for purposes of custody and certification of documents located in the Commission's other processing and storage locations.

3. 47 CFR 0.401 is revised in its entirety to read as follows:

§ 0.401 Location of Commission offices.

The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing. The appropriate receipt location for an application or other filing, consistent with one of these addresses or locations, is established elsewhere in the rules for the various

[5] Frequency coordination procedures are set out in the *Report and Order* at paragraphs 32-37.

[6] For example, the Commission's offices in Washington may close earlier than 5:30, and therefore be in holiday status, due to snow storm or other circumstances. This would not necessarily cause the Commission's offices in Gettysburg, Columbia, Pittsburgh, or any of the Field Offices to be ir holiday status on that day.

[7] The types of mass media hearings requiring fees are discussed in the *Report and Order* at paragraphs 137 through 145.

[8] 5 U.S.C. 553(b)(A). In addition, the underlying substantive decisions that necessitate these additional rule changes were subject to notice and comment procedures. See, Notice of Proposed Rule Making in General Docket 86-285, 51 FR 25792 (July 16, 1986).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603 and 604.

types of submissions made to the Commission. The public should identify the correct filing location by reference to these rules.

(a) General correspondence, as well as applications and filings not requiring the fees set forth at Part 1, Subpart G of the rules (or not claiming an exemption, waiver or deferral from the fee requirement), should be delivered to one of the following locations.

(1) The main office of the Commission is located at 1919 M Street, NW., Washington, DC.

(i) Documents submitted by mail to this office should be addressed to: Federal Communications Commission, Washington, DC 20554.

(ii) Hand-carried documents should be delivered to the Secretary's Office, 1919 M Street, NW., Room 222, Washington, DC.

(2) The Commission's laboratory is located near Columbia, Maryland. The mailing address is: Authorizations and Evaluation Division, Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21045.

(3) The Commission also maintains offices at Gettysburg, PA.

(i) The mailing address of the Private Radio Bureau Licensing Division is: Federal Communications Commission, Gettysburg, PA 17326.

(ii) The mailing address of the International Telecommunications Section of the Finance Branch is: Federal Communications Commission, P.O. Box IT–70, Gettysburg, PA 17326.

(4) The locations of the field offices of the Field Operations Bureau are listed in § 0.121.

(b) Applications or filings requiring the fees set forth at Part 1, Subpart G of the rules, or claiming an exemption, waiver or deferral from the fee requirement, shall be delivered to the addresses and locations set forth below with the appropriate fees attached to the application or filing, unless otherwise directed by the Commission. In the case of any conflict between this rule and other rules establishing filing locations for actions subject to a fee, this rule shall govern.

(1) *Mass media:* (i) Applications and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1800.

(ii) Hand-carried applications and filings shall be delivered to the Federal Communications Commission, 1919 M Street NW., Room L–18, Washington, DC.

(2) *Common carrier:* (i) Applications and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1600.

(ii) Hand-carried applications and filings shall be delivered to the Federal Communications Commission, 1919 M Street, NW., Room L–18, Washington, DC.

(3) *Equipment approval:* (i) Applications and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1300.

(ii) Hand-carried applications and filings shall be delivered to the Federal Communications Commission, 1919 M Street, NW., Room L–18, Washington, DC.

(4) *Private radio:*

Note: Land mobile applications requiring frequency coordination must be submitted to the appropriate certified frequency coordinator, *not* to the addresses set forth below (See §§ 90.127 and 90.175 of the rules).

(i) Applications and filings submitted by mail shall be addressed to one of the following:

Land Transportation Radio Service (FCC Form 574 only):

Federal Communications Commission, Land Transportation Service, P.O. Box 360200M, Pittsburgh, PA 15251–6200

Business Radio Service (FCC Form 574 only):

Federal Communications Commission, Business Radio Service, P.O. Box 360291M, Pittsburgh, PA 15251–6291

Other Industrial Radio Services (FCC Form 574 only):

Federal Communications Commission, Other Industrial Services, P.O. Box 360354M, Pittsburgh, PA 15251–6354

General Mobile Radio Service (FCC Form 574 only):

Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373.

800 Megahertz Radio Service and 900 Megahertz Paging Radio Service (FCC Form 574 only):

Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416

900 Megahertz Radio Service (FCC Form 574 only):

Federal Communications Commission, 900 Megahertz Service, P.O. Box 360497M, Pittsburgh, PA 15251–6497

Land Mobile Renewal (FCC Form 574R only):

Federal Communications Commission, 574R Land Mobile Renewal, P.O. Box 360559M, Pittsburgh, PA 15251–6559

405A Station Renewal (FCC Form 405A only):

Federal Communications Commission, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703

Private Operational Fixed Microwave Service (FCC Form 402 only):

Federal Communications Commission, Microwave Service, P.O. Box 360850M, Pittsburgh, PA 15251–6850

Private Operational Fixed Microwave Service Renewal (FCC Form 402R only):

Federal Communications Commission, Microwave Service Renewal, P.O. Box 371147M, Pittsburgh, PA 15251–7147

Aviation Ground Service (FCC Form 406 only):

Federal Communications Commission, Aviation Ground Service, P.O. Box 371632M, Pittsburgh, PA 15251–7632

Aviation Ground Renewal (FCC Form 405A only):

Federal Communications Commission, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703

Marine Coast Service (FCC Form 503 only):

Federal Communications Commission, Marine Coast Service, P.O. Box 371706M, Pittsburgh, PA 15251–7706

Marine Coast Renewals (FCC Form 405A):

Federal Communications Commission, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703

(ii) Hand-carried or couriered applications and filings shall be delivered to:

Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor Room 153–2713, Pittsburgh, PA. 15259

(Attention: Wholesale Lockbox Shift Supervisor)

Each application delivered in-person must be in an envelope clearly marked for the "Federal Communications Commission" and identified with the appropriate Post Office Box address. Applications must be enclosed in a separate envelope for each Post Office Box.

(iii) Hand-carried or couriered applications and filings will be accepted between *9 a.m. and 3 p.m.*, Monday through Friday, excluding legal holidays.

4. 47 CFR 0.403 is revised to read as follows:

§ 0.403 Office hours.

The main offices of the Commission are open from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, unless otherwise stated.

5. 47 CFR 0.455 is amended by revising paragraph (a)(3) to read as follows:

§ 0.455 Other locations at which records may be inspected.

(a) * * *

(3) Applications for equipment authorization (type acceptance, type approval, certification, or advance

approval of subscription television systems) following the effective date of the authorization. See § 0.457 (d)(1)(ii). (Application files are maintained at the Commission's laboratory in Columbia, MD.)

* * * * *

6. 47 CFR 0.482 is revised to read as follows:

§ 0.482 Application for waiver of private radio rules.

Except for waiver requests attached to applications requiring fees, requests for waiver of the rules governing the Private Radio Services shall be submitted to the Commission's offices in Gettysburg, Pennsylvania. Requests for waiver attached to applications requiring fees must be submitted in accordance with § 0.401(b) of the rules and requests for waiver attached to applications requiring frequency coordination must first be submitted to the certified frequency coordinator in accordance with § 1.912(b) of the rules. Applicants submitting a request for waiver, whether or not attached to an application, who require expeditious processing of their request for waiver shall clearly caption both the request for waiver and the envelope containing it with the words "WAIVER-TIMELY ACTION REQUESTED."

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.4 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.4 Computation of time.

* * * * *

(c) All petitions, pleadings, tariffs, or other documents filed with the Commission must be tendered for filing in complete form before 5:30 p.m., in the Office of the Secretary. Documents requiring the fees set forth in Part 1, Subpart G of this Chapter must be tendered for filing in accordance with § 0.401(b) of the rules prior to the established closing time.

(d) For purposes of this section, the term "holiday" shall include Saturdays, Sundays, federal holidays, and any other day on which the applicable Commission office closes prior to the time established by rule. The determination of a "holiday" will apply only to the specific Commission location(s) designated as on "holiday" on that particular day. The term "business day" shall refer to all other days, including days when the Commission opens later than the time specified in Rules § 0.401 and § 0.403.

* * * * *

3. 47 CFR 1.227 is amended by revising paragraph (b)(4) to read as follows:

§ 1.227 Consolidations.

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (See § 1.972) is the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at Part 1, Subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. An application which is substantially amended (as defined by § 1.962(c)) will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment.

* * * * *

4. 47 CFR 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees, and number of copies.

Except as specified in § 22.6 or elsewhere in this chapter, all applications shall be tendered for filing at the Commission's main office in Washington, DC. Hand-delivered applications will be dated by the Secretary or Fees Section upon receipt (mailed applications will be dated by the Mail Branch or Fees Section) and then forwarded to the Common Carrier Bureau. The number of copies required for each application and the processing fee (see Part 1, Subpart G) which may be required to accompany that application in order to qualify it for processing are set forth in the rules. However, if an application is not of the types covered by this chapter, an original and two copies of each such application shall be submitted.

5. 47 CFR 1.912 is amended by revising paragraphs (b), (d), and (e) as follows:

§ 1.912 Where applications are to be filed.

* * * * *

(b) All applications for private land mobile licenses which require both frequency coordination and fees as set forth at Part 1, Subpart G of this chapter shall first be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate frequency coordination and attachment of the statutory fee, such applications shall be forwarded to the appropriate address in accordance with § 0.401(b) of the rules.

(1) All applications for private land mobile licenses that require frequency coordination but not a fee shall be sent to the certified frequency coordinator for the radio service or frequency group concerned. After appropriate frequency coordination, such applications shall be forwarded to the Federal Communications Commission, Gettysburg, PA 17326.

(2) All applications for private land mobile licenses that require a fee but not frequency coordination shall be sent to the appropriate address in accordance with § 0.401(b) of the rules.

(3) All applications for private land mobile licenses that do not require either frequency coordination or a fee shall be sent to the Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

(d) Formal applications for ship station licenses (FCC Forms 506 and 405–B) shall be submitted to the Commission's office, Box 1040, Gettysburg, PA 17326. Formal applications for aircraft station licenses (FCC Forms 404 and 405–B) shall be submitted to the Commission's office, Box 1030, Gettysburg, PA 17326. Applications for Maritime Coast and Aviation Ground Stations requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

(e) All other applications that do not require fees shall be filed with the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Applications requiring fees as set forth at Part 1, Subpart G of of this chapter must be filed in accordance with § 0.401(b) of the rules.

6. 47 CFR 1.931 ia amended by revising paragraph (a) to read as follows:

§ 1.931 Requests for waiver of private radio rules.

(a) All requests for waiver of the rules governing the Private Radio Services

shall be submitted to the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Requests for waiver attached to applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules. See also § 0.482 of the rules.

* * * * *

7. 47 CFR 1.959 is revised to read as follows:

§ 1.959 Resubmitted applications.

Any application for frequencies below 470 MHz which has been returned to the applicant for correction will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, PA within 60 days from the date on which it was returned to the applicant. Otherwise it will be treated as a new application and require an additional fee as set forth in Part 1, Subpart G of this chapter. An application for frequencies above 470 MHz which has been returned to the applicant will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, PA within 30 days (45 days outside the continental United States) from the date on which it was returned to the applicant. Otherwise it will be treated as a new application and require an additional fee as set forth in Part 1, Subpart G of this chapter.

8. 47 CFR 1.1109 is revised to read as follows:

§ 1.1109 Filing locations.

Applications or other filings, with attached fees, must be submitted to the locations and addresses set forth in § 0.401(b) of the Commission's rules. These materials must be submitted as one package. The Commission cannot take responsibility for matching forms, fees, or applications submitted at different times or locations.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

2. 47 CFR 21.6 is amended by revising paragraph (b) to read as follows:

§ 21.6 Filing of applications, fees, and number of copies.

* * * * *

(b) Applications for radio station authorizations shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154 (303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. 47 CFR 22.6 is amended by revising paragraph (b)(1) to read as follows and by removing paragraph (b)(2):

§ 22.6 Filing of applications, fees, and number of copies.

* * * * *

(b)(1) Applications for radio station authorizations shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

(2) [Reserved]

* * * * *

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

1. The authority citation for Part 23 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. 47 CFR 23.50 is amended by revising paragraph (b) to read as follows:

§ 23.50 Place of filing application; fees and number of copies.

* * * * *

(b) Every application for a radio station authorization and all correspondence relating thereto shall be submitted to the Commission's office at Washington, DC 20554. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

PART 61—TARIFFS

1. The authority citation for Part 61 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. 47 CFR 61.32 is revised to read as follows:

§ 61.32 Method of filing publications.

Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." (Tariff publications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.) Two copies of tariff publications must be filed under a letter of transmittal. The date on which the publication is received by the Secretary of the Commission or the Fees Section (or the Mail Room where submitted by mail) is considered the official filing date. Simultaneously with filing of the publications and by the same means, the issuing carrier must send a copy of the publication, supporting information specified in § 61.38, and transmittal letter to the commercial contractor (at its office on Commission premises) and the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The copies of supporting information required here are in addition to those required by § 61.38(c).

3. 47 CFR 61.153 is revised to read as follows:

§ 61.153 Method of filing applications.

A carrier applying for special permission must submit two copies of the application (including illustrative tariff pages, associated amendments and exhibits) to the Secretary, Federal Communications Commission, Washington, DC 20554 (Special permission applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules). Simultaneously, and by the same means, a carrier must furnish a separate copy with all attachments to the Chief, Tariff Review Branch. If a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from the FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No. _____
(Date)_____

Secretary
Federal Communications Commission
Washington, DC 20554
Attention: Common Carrier Bureau [here provide the statements required by § 61.152]

(Exact name of carrier)— _____
(Name of officer or agent)— _____

(Title of officer or agent)— ————————

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. 47 CFR 68.200 introductory text is revised to read as follows:

§ 68.200 Application for equipment registration.

An original and two copies of an application for registration of terminal equipment and protective circuitry shall be submitted on FCC Form 730 to the Federal Communications Commission, Washington, DC 20554 (Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules). An application for original approval of an equipment type directly connected to the network on May 1, 1976 may be submitted as a short form application (unless the Commission specifically requests the filing of complete information). All other applications shall have all questions answered and include the following information:

* * * * *

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

2. 47 CFR 73.3512 is revised to read as follows:

§ 73.3512 Where to file; number of copies.

All applications for authorizations required by § 73.3511 shall be filed at the FCC in Washington, DC (Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.) The number of copies required for each application is set forth in the FCC Form which is to be used in filing such application.

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 1454, 301, 303, 307, 308, 309, unless otherwise noted.

2. 47 CFR 76.7 is amended by revising paragraph (c)(3) to read as follows:

§ 76.7 Special relief.

* * * * *

(c) * * *

(3) An original and two (2) copies of the petition and all subsequent pleadings shall be filed. Special relief petitions requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 1454, 301, 303, 307, 308, 309.

2. 47 CFR 78.15 is amended by revising paragraph (a) to read as follows:

§ 78.15 Contents of applications.

(a) Applications for authorization in the Cable Television Relay Service shall be submitted on FCC Form 327, and shall contain the information requested therein. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

3. 47 CFR 78.20 is amended by revising paragraph (a) to read as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, DC, are dated upon receipt and then forwarded to the Mass Media Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete, are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

2. 47 CFR 80.23 is amended by revising paragraph (c) to read as follows:

§ 80.23 Filing of applications.

* * * * *

(c) Each application must be filed with the Federal Communications Commission, Gettysburg, PA 17326 unless otherwise noted on the application form. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.127 is amended by revising paragraph (a) to read as follows:

§ 90.127 Filing of applications.

(a) All applications for private land mobile licenses that require both frequency coordination and fees as set forth at Part 1, Subpart G of this chapter shall first be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate coordination and attachment of the statutory fee, such applications shall be forwarded to the appropriate address in accordance with § 0.401(b) of the rules. A list of the certified frequency coordinators may be obtained from the Federal Communications Commission, Gettysburg, PA 17326.

(1) All applications for private land mobile licenses that require frequency coordination but not a fee shall be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate coordination, such applications shall be forwarded to Federal Communications Commission, Gettysburg, PA 17326.

(2) All applications for private land mobile licenses that require a fee but not frequency coordination shall be sent to the appropriate address in accordance with § 0.401(b) of the rules.

(3) All applications for private land mobile licenses that do not require either frequency coordination or a fee shall be sent to the Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

3. 47 CFR 90.135 is amended by adding a new paragraph (f) to read as follows:

§ 90.135 Modification of license.

(f) Any change that requires a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 1.912 (b) or § 1.912 (b)(2) of the rules.

4. 47 CFR 90.151 is amended by revising paragraph (d) to read as follows:

§ 90.151 Requests for waiver.

* * * * *

(d) Requests for waiver of the rules not related to a specific application shall be submitted to the Federal Communications Commission, Gettysburg, PA 17326. (Waiver requests associated with and attached to specific applications that require a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules. See also § 0.482 of the rules.)

5. 47 CFR 90.354 is revised to read as follows:

§ 90.354 Forms to be used.

Applications for trunked radio facilities shall be submitted on FCC Forms 574 and 574–A, and such applications shall be filed with the Federal Communications Commission, Gettysburg, PA 17326, unless a fee is required. Applications requiring a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

6. 47 CFR 90.360 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.360 Processing of applications.

* * * * *

(b) All applications in pending status will be processed in the order in which they are received, determined by the date on which the application acceptable for filing was received by the Commission, in its Gettysburg, PA Office, 17326 (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter).

(c) Each application will then be reviewed to determine whether it can be granted. Frequencies may be specified by the applicant pursuant to the applicable provisions of § 90.621 of the rules or the applicant may elect to have the Commission select the frequencies. Frequencies will be selected in accordance with the Commission's assignment policies and loading criteria. If the application cannot be granted due to lack of available frequencies the application will be placed in queue on a waiting list. Applications will be ranked in two groups of descending priority. The first group will be comprised of all licensees of trunked systems with 70 or more mobile units per channel. Only those licensees whose systems are licensed to at least 80 mobiles per channel will be assigned additional frequencies. The second group will be comprised of all other applicants. Each application will be placed in its appropriate group in the order it was received at the Licensing Division in Gettysburg, Pennsylvania (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter). When frequencies become available they will be assigned to the highest ranking applicant which is eligible to use them based on channel loading, the site specified, the Commission's mileage separation standards, and other applicable standards. Trunked systems which have had authorized channels reclaimed due to failure to meet the loading requirements in § 90.366 or § 90.631 will not be permitted on the waiting list for a period of 6 months from the date of the issuance of the superseding license.

* * * * *

7. 47 CFR 90.611 is amended by revising paragraph (b) to read as follows:

§ 90.611 Processing of applications.

* * * * *

(b) All applications in pending status will be processed in the order in which they are received, determined by the time and date on which the application was received by the Commission in its Gettysburg, PA Office (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter.

* * * * *

PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.25 is amended by revising paragraph (b) to read as follows:

§ 94.25 Filing of applications.

* * * * *

(b) For applications requiring a fee as set forth at Part 1, Subpart G of this chapter, the completed application package must be filed in accordance with § 0.401(b) of the rules. Applications not requiring a fee shall be filed with the Commission's offices in Gettysburg, PA and shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

PART 95—PERSONAL RADIO SERVICES

1. The authority citation continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 95.71 is amended by revising paragraph (a) to read as follows:

§ 95.71 Applying for a new or modified license.

(a) An entity (see § 95.5(a)) applies for a license for a new GMRS system by filling out an application form, attaching all additional information required, and sending it to the FCC. A licensee applies to modify a license for an existing GMRS system using the same forms and in the same manner as applying for a new GMRS system. Applications requiring a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b). Application not requiring a fee must be sent to: Federal Communications Commission, Attention: GMRS, Gettysburg, PA 17326.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–6894 Filed 3–30–87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R-0597]

Rules Regarding Availability of Information; Freedom of Information Reform Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of the Federal Reserve System ("Board") proposes to amend its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act ("FOI Reform Act"), Pub. L. 99-570, by revising the schedule of fees applicable to requests for Board records pursuant to the Freedom of Information Act ("FOIA").

DATE: Comments on this proposal should be received by April 20, 1987.

ADDRESS: Interested parties are invited to submit written comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.). Written comments should refer to Docket No. R-0597. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information. (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202)/452-3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . .". This schedule must conform to the guidelines promulgated by the Office of Management of Budget ("OMB"). OMB published proposed guidelines on January 16, 1987 (52 FR 1992). The fee schedule included in this proposal conforms to the proposed guidelines published by OMB. Any changes made by OMB in its final guidelines will be incorporated into the Board's final rule.

Pursuant to the FOI Reform Act and the proposed OMB guidelines, the Secretary has set fees to recover the full direct costs incurred by the Board in searching for, reviewing, and duplicating documents in response to FOIA requests. This proposal sets forth the schedule of fees and the procedures for requesting a waiver of the fees. The fees are set forth in Appendix A. In compliance with the FOI Reform Act, requesters are classified into four different categories for fee assessment purposes: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

Commercial use requesters—A commercial use request is defined as a request from or on behalf of one who seeks information for a use of purpose that is related to commerce, trade or profit as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA. When the Board receives a request for documents appearing to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requesters should note that the Board may assess fees for the search for and review of documents even if no documents are ultimately released.

Educational noncommercial scientific institution requesters—An "educational institution" is defined as an accredited institution of higher learning engaged in scholarly research. A "noncommercial scientific institution" is defined as an independent non-profit institution whose purpose is to conduct scientific research. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are in furtherance of scholarly or scientific research. To be eligible for free search time, the requester must reasonably describe the records sought.

Representatives of the news media—This term is defined as any representative of established news media outlets, *i.e.*, any organization such as a television or radio station, or a newspaper or magazine of general circulation, or a person working for an organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100

pages. To be eligible for free search time, the requester must reasonably describe the records sought.

All other requesters—The Board will assess fees for search and duplication to all requesters who do not fit in the above categories, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge.

To prevent abuse of the provisions granting 100 pages of duplication and two hours of search time free of charge, this rule incorporates the proposed OMB guidelines permitting aggregation of requests that are reasonably believed to have been broken down to evade fees.

Subpart (g) provides that the Board may require advance payment of fees if the total fees are estimated to exceed $250, or where a requester has previously failed to make timely payment of fees due. This subpart also incorporates proposed OMB guidelines permitting interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim. This rate is set annually by the Secretary of the Treasury equal to the average 12-month investment rate on Treasury tax and loan accounts.

The FOI Reform Act requires that fees shall be waived or reduced where the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Subpart (h) sets forth the required contents of a request for a waiver or reduction of fees and the factors the Secretary will consider in determining whether to grant the request.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

List of Subjects in 12 CFR Part 261

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Board's authority under section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board proposes to amend its Rules Regarding Availability of Information (12 CFR 261) as follows:

PART 261—[AMENDED]

1. The authority citation for Part 261 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 261.4 [Amended]

2. The Board proposes to amend Part 261 by removing § 261.4(g) and adding § 261.8 to read as follows:

§ 261.8 Fee schedules; waiver of fees.

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See Appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the direct costs of search, duplication, or review.

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 261.4 of this part. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Duplication" refers to the process of making a copy of a document necessary to respond to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(3) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may draw reasonable inferences from the requester's identity and charge fees accordingly. For example, the Secretary may presume that a document request written on corporate letterhead stationery that merely recites a list of the documents wanted is for a commercial use.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to an accredited institution of higher learning engaged in scholarly research.

(3) "Noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(4) "Representative of the news media" refers to any representative of established news media outlets, *i.e.*, any organization such as a television or radio station, or a newspaper or magazine of general circulation, or person working for such organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests accordingly.

(g) *Payment procedures.*—(1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to section 261.4 of this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under § 261.4(d) of this part, the running of the time period will begin only after the Secretary receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(h) *Waiver or reduction of fees.*—(1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined that disclosure of the information is in the public interest because it is lilely to contribute significantly to public understanding of the operations or activities of the Board and is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In detemining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Board;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(2) *Contents of request for waiver.* the Secretary will normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act) are $50 or less; but the Secretary may waive fees in excess of the amount.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

Appendix A to § 261.8—Freedom of Information Fee Schedule

Duplication:

Photocopy, per standard page	$ .08
Paper copies of microfiche, per frame	$ .07
Duplicate microfiche, per microfiche	$ .10

Search and review:

Clerical (Grades FR4–FR7), hourly rate	$ 8.50
Technical (Grades FR8–FR11), hourly rate	$12.80
Management/professional, hourly rate	$25.90

Computer search and production:

For each request the Secretary will separately determine the actual direct cost of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than $4.

The Secretary of the Board will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, former employees, and applicants for employment who request records for use in prosecuting a grievance of complaint of discrimination against the Board.

By order of the Board of Governors, effective March 25, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–6960 Filed 3–30–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-19-AD]

Airworthiness Directives; Am-Safe, Incorporated, Restraint System Assemblies

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Am-Safe, Inc., restraint systems, which would require inspection and replacement, if necessary, of incorrectly manufactured lap belt connectors. This proposal is prompted by a report that some connectors were installed which were not manufactured to the correct dimensions. This condition, if not corrected, could lead to the inadvertent unbuckling of the restraint system, with the resultant lack of occupant restraint under either flight loads or crash loads.

DATE: Comments must be received no later than May 20, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-19-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Am-Safe, Inc., 240 North 48th Avenue, Phoenix, Arizona 85043. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Western Aircraft Certification Office, ANM-173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1388.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Dockets for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-19-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has recently received a report of a restraint system assembly becoming unlatched during flight. Investigation revealed that, under some conditions, the connector may become dislodged from the buckle if a side load is placed on the assembly. Inspection of the connector involved, and other connectors from the same lot number, revealed that the connector dimensions were incorrect. This condition, if not corrected, could lead to the inadvertent unbuckling of a restraint system assembly, with the resultant lack of restraint of the occupant under either flight loads or crash loads.

The FAA has reviewed and approved Am-Safe, Inc., Service Bulletin AS001, dated November 5, 1986, which describes how the identify and replace the connectors from the unsatisfactory lot.

Since this condition is likely to exist on any Am-Safe, Inc., restraint system assembly using the incorrectly manufactured lap belt connectors, an airworthiness directive (AD) is proposed which would require inspection and replacement of the incorrectly manufactured lap belt connectors, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 1250 connectors would be affected by this AD, that it would take approximately one-half manhour per connector to inspect, remove and replace an unsatisfactory connector, and that the average labor cost would be $40 per manhour. Am-Safe, Inc., will supply replacement connectors at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

AM-SAFE, Incorporated: Applies to Am-Safe, Inc., occupant restraint system assemblies, Part Numbers 501825-403, 501907-401, 501907-403, 501907-405, 502061-401, 502147-401, and 502147-403. (Seat belt portion approved under Technical Standard Order C22f). Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate restraint system connectors with the incorrect dimensions, which could allow inadvertent opening of occupant restraint system assemblies, accomplish the following:

A. Inspect the affected restraint system assemblies in accordance with Am-Safe, Inc., Service Bulletin No. AS001, dated November 5, 1986, or later FAA-approved revisions, to determine the Lot number of the connector. If the connector is not of Lot 04, no further action is required. If the connector is found to be of Lot 04, the connector must be removed and replaced with a connector of a different lot number before further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager,

Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Am-Safe, Incorporated, 240 North 48th Avenue, Phoenix, Arizona 85043. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Issac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-7020 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-17-AD]

Airworthiness Directives; British Aerospace (BAe) Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to BAe Model BAC 1-11 200 and 400 series airplanes, which currently requires repetitive inspections and repairs, if necessary, of the tailplane center section top skin assembly for cracks in the reinforcing plate. Significant cracks have been reported in the reinforcing plate prior to the time an inspection is required by the existing AD. This action would reduce the initial compliance time from 40,000 to 30,000 landings.

DATES: Comments must be received no later than May 20, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-17-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospae Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-17-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

AD 85-12-05, Amendment 39-5075 (50 FR 21585; May 28, 1985), requires inspections for cracking of the horizontal stabilizer center section upper skin reinforcing plate on BAC 1-11 200 and 400 series airplanes. The inspections are required to commence upon the accumulation of 40,000 landings. Recent inspections have found cracks on stabilizers on airplanes with fewer than 40,000 landings. To ensure the continued airworthiness of these airplanes, the manufacturer revised BAe BAC 1-11 Service Bulletin 55-A-PM5873 (Issue 3, dated July 1, 1986) to specify the initial inspection at 30,000 landings. In addition, repetitive inspections are now specified for stabilizers modified to the PM 1253 standard. The United Kingdom Civil Aviation Authority (CAA) has classified this issue as mandatory.

Since this condition may exist or develop on airplanes of this type design registered in the U.S., the FAA is proposing to supersede the existing AD with a new AD to require inspection and repair, if necessary, in accordance with the issue of the service bulletin previously mentioned.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have s signifcant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($100). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85-12-05, Amendment 39-5075 (50 FR 21585; May 28, 1985), with the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the integrity of the tailplane center section top skin assembly

due to cracks in reinforcing plates, accomplish the following prior to the accumulation of 30,000 landings or within the next 2,000 landings after the effective date of this AD, whichever occurs later:

A. Visually inspect the tailplane center section top skin assembly for cracks in the reinforcing plate in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Service Bulletin 55-A-PM5873, Issue 3, dated July 1, 1986:

1. If no cracks are found, repeat the visual inspection specified above at intervals not to exceed 7,500 landings;

2. If cracks are found, repair in accordance with the accomplishment instructions of the service bulletin before further flight. Reinspect in accordance with paragraph 2.2 of the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD-85-12-05, Amendment 39-5075.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-7021 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-199-AD]

Airworthiness Directives; General Dynamics Models 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified for Turbopropeller Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, including turbopropeller coversions, which would require repetitive inspections of the main landing gear drag strut pivot bolt and replacement, if necessary. This proposal is prompted by reports of one fractured and several cracked main landing gear drag strut pivot bolts. This condition, if not corrected, could lead to failure of the main landing gear drag strut pivot bolt and collapse of the main landing gear.

DATE: Comments must be received no later than May 20, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration (FAA), Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1167.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administration before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received a report that, during a walk-around inspection, one operator found a main landing gear drag strut pivot bolt assembly, Part Number (P/N) 340-5110105 (consisting of the -7 bolt and two lubrication fittings), protruding approximately 1.5 inches from the drag strut. The bolt had fractured at the transverse lubrication holes. The main landing gear would have collapsed if this bolt had worked its way completely out of the drag strut. Since then, operators have removed 32 subject bolts from service for inspection. Thirteen of these bolts were not airworthy due to crack indications emanating from the lubrication holes. The total time-in-service for the subject bolts cannot be determined.

The FAA has reviewed and approved General Dynamics, Convair Division, Service Bulletin 640(340D)32-14, dated October 10, 1986, which describes action required to detect and replace cracked or broken bolts and requires bolt inspection using magnetic particle inspection procedures.

There are General Dynamics (GD) (Convair) 340 and 440 airplanes that have been modified by installation of turbopropeller engines in accordance with various supplemental type certificates. Unofficial model numbers of the GD Models 340 and 440 have been adopted by the public to denote the particular engine installation, i.e., Model 640 denotes installation of Rolls Royce-Dart engines. This AD would apply to all GD 340 and 440 airplanes, including those modified with turbopropeller engines.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive (AD) is proposed which would require inspection of the main landing gear drag strut pivot bolt, and replacement, if necessary, in accordance with the General Dynamics service bulletin previously mentioned.

It is estimated that 350 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average

labor cost would be $40 per manhour. Two bolts are required per airplane; each bolt is estimated to cost $600. Based on these figures, the total cost impact of the AD on the U.S. operator is estimated to be $644,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities because few, if any, General Dynamics Model 340, 440, or C-131 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2 By adding the following new airworthiness directive:

General Dynamics (Convair): Applies to Models 340, 440, and C-131 (Military) series airplanes, including all such model airplanes converted to turbopropeller power, equipped with main landing gear drag strut pivot bolt assembly Part Numbers (P/N) 340-5110105, or 340-5110105-1, or 340-5110105-3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear drag strut pivot bolt and possible subsequent main landing gear collapse, within 500 hours time-in-service after the effective date of this AD, accomplish the following:

A. Inspect the main landing gear drag strut pivot bolt assembly P/N 340-5110105 or 340-5110105-1 or 340-5110105-3, using magnetic particle inspection procedures, in accordance with Paragraph 2., "Accomplishment Instructions" of General Dynamics, Convair Division, Service Bulletin 640(340D)32-14, dated October 10, 1986, or later revisions approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

1. If no cracks are found, reinstall the bolt and repeat the bolt inspection in accordance with paragraph A., above, at intervals not to exceed 500 hours time-in-service since last bolt inspection.

2. If any crack is found, before further flight, replace main landing gear drag strut pivot assembly with P/N 340-5110105, 340-5110105-1 or 340-5110105-3 or equivalent approved by Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

a. If a new 340-5110105 or 340-5110105-1 main landing gear drag strut pivot bolt assembly is used as a replacement, repeat the bolt inspection in accordance with paragraph A., above, within 3,000 hours time-in-service after bolt installation and thereafter at intervals not to exceed 500 hours time-in-service since last bolt inspection.

b. If a new main landing gear drag strut pivot bolt assembly P/N 340-5110105-3 is used as a replacement part, repeat the bolt inspection in accordance with paragraph A., above, within 6,000 hours time-in-service after bolt installation, and thereafter at intervals not to exceed 500 hours time-in-service since last bolt inspection.

B. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

C. Alternate means of compliance which provide an acceptable level of safety, may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. Attn: Chief, Aircraft Logistical Support, Mail Zone 92-2920. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region

[FR Doc. 87-7022 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-3177-8]

Approval and Promulgation of State Implementation Plans; Revisions to Regulation No. 3, Visibility Protection; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve a revision in the Colorado Air Quality Control Commission Regulation No. 3, of the Colorado State Implementation Plan (SIP) which was submitted by the Governor on May 13, 1986. This revision adds New Source Review (NSR) visibility protection in mandatory Class I areas for sources locating in nonattainment areas. Colorado's Prevention of Significant Deterioration (PSD) regulation containing visibility protection for mandatory Class I areas for sources locating in attainment areas was submitted on April 12, 1983. EPA is proposing to approve both the attainment and nonattainment new source review procedures for visibility protection for source categories regulated by the Colorado NSR and PSD regulations, which have previously been approved by EPA. These regulations will replace the Federal visibility regulations now in effect.

DATES: Comments are due June 1, 1987.

ADDRESSES: Copies of the documents relevant to this proposed action are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Air Programs Branch, Environmental Protection Agency, Region VIII, Denver Place, 999 18th Street, Denver, Colorado, 80202-2405.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, Denver Place, 999 18th Street, Denver, Colorado, 80202-2405, (303) 293-1773.

SUPPLEMENTARY INFORMATION: Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400 through 81.437). Section 169A specifically requires EPA

to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the States to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1)). That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to propose to incorporate Federal regulations in States where SIPs were deficient with respect to the 1980 visibility new source review (NSR) and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement allows a state an opportunity to avoid Federal promulgation if it submits a SIP by May 6, 1985. Colorado is one of the states listed in 49 FR 42670 as having an inadequate NSR and monitoring plan for visibility protection.

The final promulgation of the Federal visibility regulations for all States having deficient SIPs was effective on July 12, 1985 (49 FR 28544). Colorado was one of the States that did not meet the May 6, 1985, deadline for submitting a SIP containing visibility protection.

On May 13, 1986, the Governor of Colorado submitted a revision to Regulation 3, which contains the PSD and NSR Regulations for visibility protection of mandatory Class I areas. The following areas in Colorado are mandatory Class I areas where visibility is an important value:

Black Canyon of the Gunnison Wilderness
Eagles Nest Wilderness
Flat Tops Wilderness
Great Sand Dunes Wilderness
La Garita Wilderness
Maroon Bells-Snowmass Wilderness
Mesa Verde National Park
Mount Zirkel Wilderness
Rawah Wilderness
Rocky Mountain National Park
Weminuche Wilderness
West Elk Wilderness

New Source Review

40 CFR 51.307 requires states to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must underdo visibility new source review (See 40 CFR 51.307(a) and (b)(2), respectively). These requirements ensure that (1) the visibility impact review is conducted in a timely and consistent manner, (2) the reviewing authority considers any timely FLM analysis demonstrating that proposed source would have an adverse impact on visibility, and (3) public availability of the permitting authority's conclusion.

There are two parts to visibility NSR: PSD major stationary sources and major sources in nonattainment areas.

For all major PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may impact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the notification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide in its notice of public hearing on the application an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

For major sources in nonattainment areas:

(1) A major source or modification that may impact a visibility protection area must provide a visibility impact analysis.

(2) The State must ensure that the sources' emissions are consistent with the national visibility goal. The State may consider the cost of compliance, the time for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(3) The State must follow the same procedures outlined in the PSD items 1–5 above in conducting nonattainment area visibility reviews.

Items 1 through 5 for major PSD stationary sources and items 1 through 3 for major sources in nonattainment areas are the procedural steps in visibility review as defined in 40 CFR 52.27(d) and 52.28(c) and (d), respectively. (40 CFR 52.27 and 52.28 were proposed in 49 FR 42670 and finalized in 50 FR 28544.)

The Colorado visibility SIP has incorporated into the NSR section its existing permit requirements for any source locating in an attainment or nonattainment area. The Colorado Air Quality Control Commission (AQCC) Regulation No. 3 specifies the standard requirements for any permit application and permit approval.

Section XVI. of Colorado Regulation No. 3 requires any emission permit applicant to demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. The demonstration must be reviewed by the Federal Land Manager (FLM), and any determination by the FLM must be considered by the Colorado Air Pollution Control Division in its decision to grant or deny the permit. The permit will be denied for sources proven to cause a potential impact.

The SIP commits to the notification time frame requirements to the FLM. Section XIV.A. allows the Air Pollution Control Division or the Air Quality Hearings Board (if applicable) to determine independently if there is an adverse impact to visibility in Class I areas, if the FLM fails to make such determination or such determination is in error. The Division commits to provide an explanation of its decision should it disagree with the FLM's assessment on a proposed source's impact on visibility and to give notice as to where that explanation can be obtained.

FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of Colorado has accorded the FLM (through the National Park

Service (NPS)) opportunities to participate and comment on its visibility SIP and regulations. Comments by the NPS were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the State recognizes the expertise of the FLM (i.e., the NPS) in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

Colorado's PSD Regulation, submitted on April 18, 1983, contains visibility protection from sources locating in attainment areas. EPA is proposing to approve both the attainment and nonattainment NSR procedures for visibility protection for source categories regulated by the Colorado PSD and NSR regulations which have previously been approved by EPA. However, as described below, Colorado's NSR and PSD Regulations have been disapproved for certain sources. The EPA promulgated visibility regulations will remain in effect for these sources.

On April 30, 1981, EPA approved Colorado's New Source Review Regulations for nonattainment areas (40 FR 21180), except for the following portions:

(1) Section IV.D.2(b)(ii)(G), which exempts from "major modification" a change of an existing oil-fired or gas-fired boiler to the use of a coal/oil mixture, shale oil, or coal-derived fuels, provided that such change would not interfere with reasonable further progress toward attainment of any National Ambient Air Quality Standard.

(2) Section IV.D.2.(b)(iii), "major modification" and the definition of "major stationary source" in the Common Provisions Regulation that provides that fugitive emissions of particulate matter from any of the 26 listed source categories will be excluded in determining whether the source is major, even though quantifiable, if the owner or operator of the source demonstrates to the satisfaction of the Colorado Air Pollution Control Division that such emissions are of a size and substance that will not adversely affect public health or welfare.

(3) Section IV.H.6., that allows the Division to grant an applicant a period of greater than six months to bring a source into compliance.

(4) Regulation No. 3 did not include a provision for "reconstruction", and certain fugitive emissions may escape review since they were not included in Colorado Regulations No. 6 and No. 8, but were regulated under Federal New Source Performance Standards or National Emission Standards for Hazardous Pollutants. Any source which escapes review because of these deficiencies in Regulation No. 3 will be subject to federal enforcement actions. The proposed visibility protection requirements relating to those disapproved portions of the Colorado NSR are not effective with this action.

Likewise, Colorado's Prevention of Significant Deterioration (PSD) regulation was approved on September 2, 1986, except for the following portions:

(1) The following industrial source categories:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric, and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (Furnace Process)

Primary Lead Smelters

Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

(2) Sources that would avoid any Federal PSD requirements due to exemptions in the Colorado PSD Regulation relating to fugitive emissions.

(3) Sources that would not need a Colorado permit due to an exemption for modification of oil or gas boilers to burn coal, shale oil, or coal-derived fuels (Regulation 3.I.B.2.c.viii).

(4) Sources that would be exempted from a Colorado permit due to the State definition of Stationary Source (Common Provisions Regulation) which reads "except those properties which are or will be used only for right-of-way, transmissions, gathering, transportation, communication, pipeline, or similar purposes shall not be considered contiguous or adjacent."

(5) Sources that would avoid compliance with their permits due to that portion of Regulation 3.IV.H.4 allowing an administrative compliance waiver for as long as six months to a new source which violates a term of its permit.

(6) Sources that would receive a Colorado permit based upon the provision covering Time Constraints on Division Action found in Regulation 3.IV.F. The proposed visibility protection regulation will not be in effect for the disapproved sources listed above.

Proposed Action

EPA is proposing to approve the amendments to Colorado's Regulation No. 3 as they apply to New Source Review for visibility protection and to remove federally promulgated visibility new source regulations in Colorado, except as they apply to categories of sources for which the Colorado NSR and PSD regulations have been disapproved.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: December 18, 1986.

John G. Welles,

Regional Administrator.

[FR Doc. 87–6985 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–FRL–3177–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Huffy Corporation Bicycle Assembly Plant (Huffy Corporation) in Celina, Ohio. The proposed revision would exempt the spray coating lines at the Huffy Corporation from the requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1) of the Ohio ozone SIP. USEPA's action is based upon an April 9, 1986, revision request that was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 30, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5 AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On April 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to its ozone SIP, a request to exempt the Huffy Corporation Bicycle Assembly Plant in Celina, Ohio from the requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U)(1) of the Ohio ozone SIP. The current rule requires Huffy Corporation to comply by meeting emission limits between 3.5 and 4.3 pounds of volatile organic compound (VOC) per gallon of coating, excluding water (depending upon the coating used). The request for a revision was submitted in the form of a change to Ohio's VOC rules. OAC Rule 3745-21-(U)(2)(j) contains this exemption for Huffy Corporation. This revision became effective in the State of Ohio on May 9, 1986

USEPA approved the Ohio's VOC rules as part of the ozone SIP as meeting the reasonably available control technology (RACT) Part D requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097). Although RACT VOC regulations are required by Part D in all ozone nonattainment areas, Ohio's rules are applicable to both attainment and nonattainment areas. Therefore, the State is now requesting that USEPA approve this relaxation for the Huffy Corporation because it is located in an attain-area (Mercer County), and RACT-level control is not required by the Clean Air Act in such areas.

Air Quality

The Huffy Corporation is located in Mercer County, which is a rural attainment area for ozone. In 1982 OEPA monitored the ambient ozone concentration in Mercer County. No exceedances of the ozone standard were observed.

Because Mercer county has always been classified as attainment for ozone USEPA can approve a relaxation from RACT for sources in that area so long as it can be demonstrated that such relaxation will not jeopardize continued attainment. This relaxation will not result in any increase in actual emissions from the Huffy facility. Consequently, it will no interfere with continued maintenance of the ozone standard.

This rulemaking relaxes a stationary source reasonably available control technology (RACT) emission limitation in an area that has always been designated as attainment/unclassifiable for ozone. Originally, this RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. The original principle of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/unclassifiable areas under USEPA's prevention of significant deterioration regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. Therefore, this action, when promulgated, will cancel the accommodative SIP for Mercer County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas. All sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

Technical Feasibility

Huff indicated that it experimented with water based coating, but such coating did not meet the company's specification for color and durability. Powder and high solid coatings were rejected by the company because they require different set of application equipment and spray booths, the turnaround time for color changes takes longer, and the quality of the coatings does not meet the company's specification.

Cost-effectiveness ratios based on the data submitted are within the range which USEPA's Control Techniques Guideline document for this source category indicates is cost-effective for spray coating of miscellaneous metal parts and products Therefore, USEPA considers the existing emission limitations to represent RACT for this sources. USEPA does not require this source to meet RACT because it is located on an attainment area.

Proposed Action

USEPA is proposing to approve this SIP revision for the following reasons: (1) The Huffy Corporation is in Mercer County, which is a rural attainment area for ozone. The Clean Air Act does not require RACT level VOC control in attainment areas; and

(2) Approval of this proposed SIP revision will not increase the historical VOC emission level from this source. Therefore, it will not interfere with the attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS) in Mercer County.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

Authority: 42 U.S.C. 7401-7642.

Dated: September 17, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-6989 Filed 3-30-87; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 21, 1987.

Time: 1 p.m.

Place: U.S. Department of Agriculture, Agricultural Marketing Service, Tobacco Division, Training Laboratory, Room 402, 333 Waller Avenue, Lexington, Kentucky 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. *511 et seq.*), to hear persons, who have asked to address the Committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the Committee will address the pairing or grouping of burley markets and the distribution of the graders among markets for the 1987–88 selling season.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee chairperson. Persons, other than members, who wish to address the Committee at the meeting should contact Lioniel Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Washington, DC 20250, (202) 447–2567, prior to the meeting.

Dated: March 23, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87–6994 Filed 3–30–87 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board, Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board

Date: May 6–8, 1987

Time: 8:00 a.m.–5:30 p.m., May 6–8, 1987

Place: Iowa State University, Ames, Iowa; Thompson Farm, Boone, Iowa; National Animal Disease Center, Ames, Iowa; Pioneer Hi-Bred International, Inc., Johnston, Iowa.

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be reviewing agricultural research and extension programs at ISU, low-input farming at Thompson Farms, animal disease research at NADC, and biotechnology research at Pioneer HI-Bred.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447–3684.

Done in Washington, D.C., this 20th day of March 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87–6995 Filed 3–30–87; 8:45 am]

BILLING CODE 3410–02–M

Food and Nutrition Service

Food Stamp Program; Striker Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: By order dated December 22, 1986, Judge Louis Oberdorfer of the United States District Court for the District of Columbia has enjoined the Secretary of Agriculture from enforcing the striker provisions in section (6)(d)(3) of the Food Stamp Act of 1977, as amended, (7 U.S.C. s2015(d)(3)) and § 273.1(g) of the Food Stamp Program regulations (7 CFR s273.1(g)) for all United Auto Worker (UAW) and United Mine Workers of America (UMWA)-represented strikers and their households.

DATES: By order of the court, this notice is effective January 2, 1987. State agencies must implement the provisions of this notice retroactive to January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Pinto, Supervisor, Certification Policy and Quality Control Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 (703)(765–3471).

SUPPLEMENTARY INFORMATION: State agencies must implement this action on January 2, 1987 by order of the U.S. District Court of the District of Columbia. The Court further ordered the Department to publish the provisions of the court order as a notice in the **Federal Register.**

Classification

Executive Order 12991

This action has been reviewed under Executive Order 12291 and Secretay's Memorandum 1512–1. This action will not have significant adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain a member who is on strike and who is represented by either UAW or UMWA. Some currently ineligible households may become eligible for program benefits. Other households could receive increased benefits.

Paperwork Reduction Act

The Department is in the process of obtaining approval from the Office of Management and Budget under the Paperwork Reduction Act of 1980 (40 U.S.C. 3507) for the reporting requirements contained in this notice. State agencies in states where there is a UAW or UMWA-represented strike will be required to report monthly on the amount of benefits issued to the affected strikers and their households to which they would not be entitled absent the court order.

Background

Judge Louis Oberdorfer of the U.S. District Court for the District of Columbia, in the case of *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, United Auto Workers (UAW) and United Mine Workers of America (UMWA), et al., v. Richard A. Lyng, Secretary, U.S. Department of Agriculture*, Civil Action No. 84–3303, has enjoined the Secretary from enforcing the striker provisions in section (6)(d)(3) of the Food Stamp Act of 1977, as amended, and § 272.1(g) of the Food Stamp regulations for all UAW and UMWA-represented strikers and their households. The injunction is effective January 2, 1987. In order to be eligible for benefits, affected households must apply for benefits on or after January 2, 1987. For those households which apply after January 2, 1987, benefits must begin with the date of application. Benefits must be based on the household's current, not pre-strike, income. This court order applies only to strikers represented by UAW or UMWA. The statutory and regulatory striker provisions cited above continue to apply to all strikers represented by other unions and their households.

The United States is considering appeal of the court's order. The UAW and UMWA have posted a bond to reimburse the Secretary the value of benefits issued to their members pursuant to this court order pending a decision on appeal. If the government prevails on appeal, the bond will be used to reimburse the value of benefits issued as a result of the court's order. In order to monitor the amount of benefits issued pursuant to the court order, State agencies are required to maintain records on the amount of benefits issued to the affected striker households and the amount of benefits which would have been issued to such households if the provisions of § 273.1(g) of the Food Stamp regulations had been applied. Certification offices must to do two benefit calculations for each affected household in order to determine the amount of benefits being given to each striker household to which it would not be entitled absent the court order. Reports of amounts of benefits issued under the court's order must be provided by each State agency to FNS on a monthly basis. Instructions on how these reports should be submitted will be issued separately by FNS to the State agencies.

The court required that its order be published as part of this notice. Accordingly, the court order follows:

United States District Court for the District of Columbia

[Civil Action No. 84–3303]

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, et al., Plaintiffs, v. Richard A. Lyng, Secretary, U.S. Department of Agriculture, Defendant; Order Granting Interim Relief.

Upon motion of the plaintiffs' pursuant to Rule 59(e) and the defendant's response thereto, and for reasons stated in the accompanying Memorandum Re Relief Pending Appeal, it is this 22d day of December, 1986, hereby

Ordered: that, for the purpose of effectuating relief pending appeal, a class (narrower than that certified in a Memorandum and Order Certifying Class, filed this date) is certified and defined as follows:

All UAW and UMWA-represented strikers and their households who are otherwise eligible for Food Stamps but for the application of the striker disqualification of the Food Stamp Act (7 U.S.C. 2015(d)(3) and its implementing regulations and who file applications for Food Stamps as provided in this Order.

And it is further

Ordered: that the defendant Secretary of Agriculture is enjoined, pending further orders of this Court or the Supreme Court, from enforcing the provisions of 7 U.S.C. 2015(d)(3) and its implementing regulations to disqualify class members from participant in the Food Stamp program when they are determined by a State or local Food Stamp agency to meet the other eligibility requirements of the Food Stamp Act, 7 U.S.C. 2011 *et seq.*, and its implementing regulations; and it is further

Ordered: that the retroactive payment of Food Stamps to class members prior to the date on which applications are first taken pursuant to this Order is stayed pending the outcome of the defendant's appeal and further orders of this Court; and it is further

Ordered: that the defendant Secretary will notify the appropriate State Food Stamp agencies as soon as practicable that they and their subordinate local agencies are required to accept and process the applications of the members of the plaintiff class and promptly to determine their eligibility for Food Stamps beginning with the date of their application (but in no event, prior to January 2, 1987) and for each subsequent month for which their respective applications for Food Stamps are filed; and it is further

Ordered: that the defendant Secretary will reimburse State and local Food Stamp agencies for the administrative costs associated with these payments as provided by 7 U.S.C. 2025. Such reimbursements shall be handled in the same fashion as they are normally handled under the Food Stamp Act and its implementing regulations; and it is further

Ordered: that the defendant Secretary will, at the earliest practicable date, publish appropriate notice in the **Federal Register** for, among others, the relevant Federal, State, and local Food Stamp agencies, including in that notice a copy of this Order; and it is further

Ordered: that the plaintiff shall, within seven (7) business days of the date of this Order, furnish surety or corporate bonds totalling $400,000, which bond the Court finds to be a sufficient amount at this time to protect the defendant's costs of Food Stamps (other than administrative costs) incurred pursuant to this Order and subject to future adjustments in an amount as agreed to by the parties or ordered by this Court. Such bond shall be due and payable to the defendant in the event that this Court's order of November 14, 1986 is reversed on appeal, and defendant's role recourse for satisfaction of any additional costs of Food Stamps paid under this Order shall be against the plaintiff unions without recourse to recoupment for collection action directed to individual class members; and it is further

Ordered: that the parties will work to resolve all questions of compliance with this Order in good faith and will not resort to formal enforcement proceedings in this Court without first providing twenty-one (21) days written notice of the specific compliance problem to the opposing party; and it is further

Ordered: that the defendant Secretary will give twenty-one (21) days written notice to the plaintiffs of any intent to adjust the

amount of bond, before moving this Court for any such adjustment.

December 22, 1986.

Signed by:

Louis Oberdorfer,

United States District Judge.

Implementation

As stated above, this court order is effective retroactive to January 2, 1987. State agencies were notified of the provisions of this court order by means of a telegram issued on December 31, 1986.

S. Anna Kondratas,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 87-6993 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Rocky Mountain Region; Revision of Procedures; Rental Fees; Electronic Sites

AGENCY: USDA, Forest Service.

ACTION: Notice of Revision of Procedures governing determination of rental fees for most electronic sites and request for public comment.

SUMMARY: The Regional Forester of the Rocky Mountain Region is revising procedures governing determination of rental fees for most electronic uses. We welcome your comments on the following proposed fee schedule:

DATE: Comments must be in writing and received on or before June 1, 1987.

ADDRESS: Mail your comments to Gary E. Cargill, Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 W. Eighth Avenue, Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: Forest Officers in the Rocky Mountain Region administer approximately 150 electronic sites in Kansas, Nebraska, South Dakota, Wyoming and Colorado.

Currently fees are based upon 0.2 percent of the permit holders total investment in facilities and equipment and 5 percent of the rental income from building tenants and/or equipment users served by the holder.

The Federal Land Policy and Management Act of 1976 (FLPMA) requires that fees be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles.

At the discretion of the Regional Forester, fees for most electronic uses will be based upon a Regional fee schedule developed as a result of appraisal. This fee schedule will be updated annually by application of the Urban Consumer Price Index and every five (5) years by application of new market data. Fees for existing electronic use authorizations will be adjusted at the beginning of the 1988 payment year.

This Notice and a copy of the fee schedule will be mailed to all entities currently authorized to use National Forest System lands for an electronic purpose. The final schedule will be published no sooner than 60 days after publication of this notice.

Proposed Electronic Use Fee Schedule—the Rocky Mountain Region, USDA, Forest Service

Use category	Fair market rent
Television and Radio Broadcast	$2,000
Commercial Communications	1,400
Common Carrier Microwave Relay	1,500
Cable TV and Radio-TV Translator	1,000
Industrial and Governmental Microwave or Radio Repeater	1,000
Passive Microwave Reflector	500

Television and radio broadcast use

This use group broadcasts audio and/or video signals for general public reception. User revenues are generally derived from commercial advertising, but may also come from contributions and subscriptions. Broadcast areas often overlap state boundaries.

Commercial communications use

This use group includes operators who provide equipment and service and allow third party use on a contract basis to users who are not required to hold additional authorizations from the Forest Service and who may or may not hold an FCC license or necessary frequency authorization.

Common carrier microwave relay use

This group typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay.

CATV receiver and radio-TV translator use

This use group includes cable TV head-end antenna or satellite dish receivers and low watt FM translator uses. Users typically receive a signal and rebroadcast it on a different frequency to a receiver that could not receive the original broadcast.

Industrial and governmental microwave or radio repeater use

This group includes private, corporate, or governmental entities who are not in the communications business, but who have their own internal telecommunications systems or networks. Users in this group include pipeline and power companies, railroads, logging companies, ranch owners or managers, and land and resource management agencies or firms. Facilities generally include microwave relay and/or mobile two-way radio repeaters. These internal communications systems constitute an operating expense and generally contribute to revenue very indirectly. Need for the internal communication capability is sometimes safety related. The communication service is not sold and is limited to the user.

Passive microwave reflector use

Microwave reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-site with the connecting relay stations but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

FOR FURTHER INFORMATION CONTACT: Eugene Ecker (303) 236-9512, P.O. Box 25127, Lakewood, CO 80225.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 87-6957 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Pasture Creek Watershed, MT; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pasture Creek Watershed, McCone County, Montana.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana 59715, telephone (406) 587–6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for agricultural flood prevention. The planned works of improvement include a 12-foot high diversion dam, 1,400 feet of bypass channel, and a pipe drop structure to control flooding on a 1,160 acre, 100-year flood plain.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Wallace A. Jolly.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: March 20, 1987.

Glen H. Loomis,

State Conservationist.

[FR Doc. 87–6958 Filed 3–30–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 347]

Resolution and Order Approving the Application of the Illinois International Port District, for Three Special-Purpose Subzones in the Chicago Customs Port of Entry Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Illinois International Port District, grantee of FTZ 22, filed with the Foreign-Trade Zones Board (the Board) on December 20, 1985, requesting special-purpose subzone status for three sugar-product processing plants of Power Packaging, Inc. (PPI) in the Chicago, Illinois area, adjacent to the Chicago Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application for two years from the commencement of subzone operations subject to the following conditions:

(1) Authority for the subzone may be extended after a review by the Board;

(2) Power Packaging must elect domestic or privileged foreign status, as appropriate, with respect to foreign sugar that is used to manufacture products that are not covered by U.S. sugar program import quotas as designated in Presidential Proclamation 5294, as revised in Presidential Proclamation 5340 (TSUS Nos. 958.16, 958.17, and 958.18);

(3) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving sugar or sugar-containing products.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish Foreign-Trade Subzones in Du Page and Kane Counties, IL, Adjacent to the Chicago Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Illinois International Port District, formerly the Chicago Regional Port District, grantee of Foreign-Trade Zone No. 22, has made application (filed December 20, 1985, Docket 45-85, 51 FR 774) in due and proper form to the Board for authority to establish special-purpose subzones at the three food processing plants of Power Packaging, Inc., located at sites in Du Page and Kane Counties, Illinois, adjacent to the Chicago Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed December 20, 1985, the Board hereby authorizes the establishment of subzones at three plants of Power Packaging, Inc., in the Chicago area, designated on the records of the Board as Foreign-Trade Subzone Nos. 22C, 22D, and 22E at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations;

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be

signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 23rd day of March 1987 pursuant to Order of the Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 87-6977 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 346]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Wisconsin, Ltd., for a Special-Purpose Subzone in Milwaukee, WI

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign-Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, filed with the Foreign-Trade Zones Board (the Board) on March 29, 1985, requesting special-purpose subzone status for the chocolate manufacturing plant of Ambrosia Chocolate Company in Milwaukee, Wisconsin, within the Milwaukee Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application for two years from the commencement of subzone operations subject to the following conditions:

(1) Authority for the subzone may be extended after a review by the Board;

(2) Ambrosia must elect domestic or privileged foreign status, as appropriate, with respect to foreign sugar that is used to manufacture products that are not covered by U.S. sugar program import quotas as designated in Presidential Proclamation 5294, as revised in Presidential Proclamation 5340 (TSUS Nos. 958.16, 958.17, and 958.18);

(3) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving sugar or sugar-containing products.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Milwaukee, WI

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Foreign-Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone No. 41, has made application (filed March 29, 1985, Docket 6–85, 50 FR 16118) in due and proper form to the Board for authority to establish a special-purpose subzone at the chocolate products manufacturing plant of Ambrosia Chocolate Company in Milwaukee, Wisconsin;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed March 29, 1985, the Board hereby authorizes the establishment of a subzone at the plant of Ambrosia Chocolate Company, Milwaukee, designated on the records of the Board as Foreign-Trade Subzone No. 41F at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 23rd day of March 1987 pursuant to Order of the Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 87-6978 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Short Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, with respect to certain low carbon semi-finished steel slabs.

DATE: Comments must be submitted on or before April 10, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S.

Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-EC Arrangement, the U.S.-Mexico Understanding, the U.S.-Brazil Arrangement, and the U.S.-Republic of Korea Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . . ."

We have received a short supply request for low carbon (AISI grades 1006, 1008, and 1010) semi-finished steel slabs, ranging from 6 to 6.750 inches in thickness, and ranging from 35 to 53 inches in width, for use in producing hot-rolled and cold-rolled sheet and strip, and galvanized sheet and strip.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Dated: March 19, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–6979 Filed 3–30–87; 8:45 am]

BILLING CODE 3510-05-M

Georgia Institute of Technology et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–333. Applicant: Georgia Institute of Technology, Atlanta, GA 30322. Instrument: Mass Spectrometer, Model MM7070S with Accessories. Manufacturer: VG Analytical, United Kingdom. Intended Use: See notice at 51 FR 37623, October 23, 1986. Reasons for This Decision: The foreign instrument provides a resolution of 50 000 (10% valley), a moving belt liquid chromatograph interface and an alternating FAB probe. Advice Submitted By: National Institutes of Health, January 15, 1987.

Docket No.: 87–002. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Mass Spectrometer, Model VG 70–SE with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended Use: See notice at 51 FR 40243, November 5, 1986. Reasons for This Decision: The foreign instrument provides resolution to 50 000 (10% valley), scan speeds to 0.1 seconds per decade, and an alternating FAB probe. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–016. Applicant: University of California, Berkeley, CA 94720. Instrument: Electronic Visual Display Unit with Raster Rotation. Manufacturer: Joyce Electronics, United Kingdom. Intended Use: See notice at 51 FR 41379, November 14, 1986. Reasons for This Decision: The foreign instrument provides a luminance of 500 candelas per square meter, and raster rotation through 360 degrees. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–028. Applicant: National Bureau of Standards, Gaithersburg, MD 20899. Instrument: Surface Forces Apparatus, Model Mk II with Accessories. Manufacturer: Anutech Pty., Ltd., Australia. Intended Use: See notice at 51 FR 42126, November 21, 1986. Reasons for This Decision: The foreign instrument can measure forces between surfaces with a sensitivity of 10.0 nanonewtons and a distance resolution of about 0.1 nanometers. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–037. Applicant: University of Arizona, Tucson, AZ 85721. Instrument: GC/Mass Spectrometer, Model MAT–90. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 51 FR 44651, December 11, 1986. Reasons for This Decision: The foreign instrument provides resolution to 50 000 (10% valley), scan speed to 0.1 seconds per decade, and capability for GC operation in the chemical ionization (CI) mode at normal pressures. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–047. Applicant: National Bureau of Standards, Gaithersburg, MD 20899. Instrument: High Temperature Microhardness Tester, Model QM. Manufacturer: Nikon, Japan. Intended Use: See notice at 51 FR 44825, December 12, 1986. Reasons for This Decision: The foreign instrument can test the hardness of ceramics from room temperature to over 1400 degree centigrade in vacuum or selected (e.g. inert) atmosphere. Advice Submitted By: National Institutes of Health, February 17, 1987.

Comments, None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

The National Institutes of Health and National Bureau of Standards advise in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc 87–7038 Filed 3–30–87; 8:45 am]

BILLING CODE 3510-DS-M

Masters, Mates, and Pilots MATES Program; Rescission of Decision on Application for Duty-Free Entry of Scientific Instrument

The denial of the application for duty-free entry of a scientific instrument in Docket Number 82–00194, 51 FR 35019 (October 1, 1986), as corrected in 51 FR 46892 (December 29, 1986) and 52 FR 656 (January 7, 1987), has been rescinded. The Department of Commerce has reopened its review of that application.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–7039 Filed 3–30–87; 8:45 am]

BILLING CODE 3510-DS-M

Michigan Technological University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC

Docket No.: 87–069. Applicant: Michigan Technological University, Houghton, MI 49931. Instrument: Electron Probe X-Ray Microanalyzer System, Model JXA–8600. Manufacturer: Joel Inc., Japan. Intended Use: See notice at 52 FR 2125, January 20, 1987. Reasons For This Decision: The foreign instrument is capable of image analysis combining x-ray, electron and cathodoluminescence signals.

Docket No.: 87–080. Applicant: Harvard University, Cambridge, MA 01238. Instrument: Atmospheric Gas Analyzer, Model LMA–3. Manufacturer: Scintrex, Canada. Intended Use: See notice at 52 FR 2251, January 21, 1987. Reasons For This Decision: The foreign instrument provides in situ measurements of NO_2 concentration directly (without preconversion to NO) with a detection limit of 5.0 parts per trillion.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–7040 Filed 3–30–87; 8:45 am]

BILLING CODE 3510-DS-M

University of Hawaii; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–079. Applicant: University of Hawaii, Honolulu HI 96822. Instrument: Thermal Ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: See notice at 52 FR 2251, January 21, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (November 5, 1986).

Reason: The foreign instrument is equipped with a fully automated multiple collector system capable of providing an external precision on Neodymium (200 ng) of 0.001%. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonably delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–7041 Filed 3–30–87; 8:45 am]

BILILNG CODE 3510-DS-M

University of Tennessee; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–070. Applicant: University of Tennessee, Knoxville, TN 37996–1600. Instrument: Mass Spectrometer, Model ZAB–E. Manufacturer: VG Analytical Instruments Ltd., United Kingdom. Intended Use: See notice at 52 FR 2126, January 20, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (September 5, 1986).

Reasons: The foreign instrument provides a resolution up to 125,000, a mass range of 10,000 amu at 8 keV and 8000 at 10 keV in the fast atom bombardment mode. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instrument of the same general category shall be taken into account, as well as other factors which

in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response or "no bid" responses to a formal request for quotation sent to domestic manufacturers it is apparent that a domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-7045 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-007]

Pectin From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 26, 1987, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico. The review covers the period April 1, 1983 through December 31, 1984 and 12 programs.

We gave interested parties on opportunity to comment on the preliminary results. We received no comments. Based our our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 5806) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico (47 FR 54987, December 7, 1982). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican pectin, used as an ingredient in food and drugs. Such merchandise is currently classifiable under item 455.0400 of the Tariff Schedules of the United States Annotated.

The review covers the period April 1, 1983 through December 31, 1984 and 12 programs: (1) CEPROFI; (2) FONEI; (3) NDP preferential discounts; (4) CEDI; (5) FOMEX; (6) FOGAIN; (7) state tax incentives; (8) import duty reductions and exemptions; (9) Article 94 of the Banking Law; (10) BANCOMEXT loans; (11) delay of payments on loans; and (12) delay of payment of fuel charges to PEMEX.

The review covers the only known exporter of pectin to the United States, Grindsted de Mexico, S.A. de C.V. Grindsted took over Pectina de Mexico, S.A., the signatory to the suspension agreement, in January 1984.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that the signatory to the agreement has complied with its terms during the period of review. Therefore, the suspension agreement for pectin from Mexico will remain in effect.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: March 25, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 87-7037 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 31, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Report which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On October 31, 1986, the Government of the United States requested consultations with the Government of the Federative Republic of Brazil with respect to men's and boys' wool suit-type coats in Category 433. This request was made on the basis of the agreement, effected by exchange of notes dated August 7 and 29, 1985, as amended, between the Governments of the United States and the Federative Republic of Brazil relating to trade in cotton, wool and man-made fiber textile products.

This notice is to advise the public that in recent consultations between the two governments, agreement was reached on this category for the period which began on December 1, 1986 and extends through March 31, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of textile products in Category 433, produced or manufactured in Brazil and exported during the prorated four-month period which began on December 1, 1986 and extends through March 31, 1987 at a prorated limit of 5,470 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14,

1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 7 and 29, 1985, as amended, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 31, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 433, produced or manufactured in Brazil and exported during the prorated four-month period which began on December 1, 1986 and extends through March 31, 1987, in excess of 5,470 dozen.[1]

Also effective on March 31, 1987, you are directed to deduct 3 dozen from the charges to Category 433 made to the group limit for Categories 300–369 and 600–670 established in the directive of March 18, 1986 for the period April 1, 1986 through March 31, 1987. This same amount should be charged to the limit for Category 433 for the period December 1, 1986 through March 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–7036 Filed 3–30–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after November 30, 1986.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before: April 30, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Lacquer, Cellulose (Nitrate)

8010–00–598–5455

Enamel Gloss

8010–01–598–4519
8010–01–598–4520
8010–01–598–4521
8010–01–598–4522

Military Resale Commodities

No. 506

Air Deodorizer, Push-UP Type, Floral Spring.

No. 507

Air Deodorizer, Push-Up Type, Lemon.

Deletion

It is proposed to delete the following services and commodities from Procurement List 1987, November 3, 1986 (51 FR 39945):

Services

Repair of Rubberized Items

Mattress Pneumatic
(Noninsulated 8465–00–254–8887)
(Insulated 8465–00–518–2781)
Ponchos
(8465–00–935–3257)
Bag Clothing, Waterproof
(8465–00–261–6909)
Fort Bliss, TX

Repair Service of the following items at Fort Bliss, TX only

Bag, Sleeping
8465–00–242–7855
8465–01–049–0088
Case, Sleeping Bag
8465–00–237–8719
Liner, Field Jacket
8415–00–782–2888
Liner, Trousers, Field
8415–00–782–2926
Bag, Barracks
8465–00–530–3692
Bag, Duffel
8465–00–141–0932
Commissary Shelf Stocking, Naval Station, Long Beach, California
Commissary Shelf Stocking and Custodial, Columbus Air Force Base, Mississippi
Grounds Maintenance, Recreation Areas, Naval Air Station, Lemoore, California
Janitorial Service, USDA Forest Service, Sequoia National Forest, Porterville, California, at:
Supervisor's Office, Smith Building, 900 W. Grand Avenue, Warehouse Complex, 480 N. Henrahan Avenue
Shrink Wrapping Gift Packages, U.S. Postal Service, Washington, DC

Commodities

Cable Assembly, Power

6150–00–935–8799
6150–00–507–8852

C. W. Fletcher,

Executive Director.

[FR Doc. 87–7054 Filed 3–30–87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 23–24 April 1987 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independents informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with military requirements in space, strategic offensive forces, and regional conflicts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 25, 1987.

[FR Doc 87–6997 Filed 3–30–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14–15 April 1987.

Times of Meeting:

0830–1700, 14 April 1987
0830–1500, 15 April 1987

Place: Fort McClellan, Alabama.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Biological Defense Program will meet to discuss vulnerability, doctrine, training, material requirements, medical/chemical issues and program structure issues. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc 87–7076 Filed 3–30 87; 8:45am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Indian Education Programs; Formula Grants; Local Educational Agencies and Tribal Schools

AGENCY: Department of Education.

ACTION: Notice of extension of closing date for transmittal of new applications for Fiscal Year 1987 assistance under the Formula Grants—Local Educational Agencies and Tribal Schools Program.

SUMMARY: This notice extends the closing date of February 13, 1987, to April 24, 1987, for the transmittal of new applications under the Formula Grants—Local Educational Agencies and Tribal Schools Program (84.060A). The application notice for this program published, in the **Federal Register** on September 17, 1986 (51 FR 33005), provides detailed information concerning this program.

SUPPLEMENTARY INFORMATION: To assure that awards under this formula grant program are issued in sufficient time to inform grantees of the amount of their grants for the following school year, closing dates are established annually for submission of applications. These dates are published in the **Federal Register.** As a courtesy, the Department also mails application packages to all current grantees under the program. In addition, newsletters announcing the closing date are sent to current grantees by the five Resource and Evaluation Centers established by the Indian Education Program office to provide technical assistance to grantees and potential applicants for Indian Education Act funds. The notice establishing the closing date for applications for fiscal year 1987 grants was published on September 17, 1986. Application packages were mailed on November 14, 1986.

In February 1987, the Department received 1,072 grant applications, although 1,112 LEAs are currently participating in the program. The Department has determined that this reduction in school district participation, representing approximately 2,300 eligible Indian students enrolled in these districts, was the result of districts being unaware of the closing date. Many school districts that need the financial assistance provided under this program cannot afford to subscribe to the **Federal Register.** Further, while the Department has attempted in the past two years to establish annual closing dates in February so that LEAs may plan accordingly and request application packages if they have not received them reasonably in advance of that month, the dates were extended in those years due to special circumstances. As a result, many LEAs may have expected a closing date later in the year.

The extension of the closing date to April 24, 1987, will enable all eligible applicants to apply or to amend their applications at their discretion. This extension will not substantially alter the schedule for issuance of grant awards.

FOR FURTHER INFORMATION: Inquiries concerning this extension should be addressed to Mr. Ervin Keith, Deputy Director, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177 (Mail Stop 6267), Washington, DC 20202. Telephone (202) 732–5042.

(20 U.S.C. 241aa–241ff)

(Catalog of Federal Domestic Assistance Number 84.060, Formula Grants—Local Educational Agencies and Tribal Schools)

Dated: March 26, 1987.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–7059 Filed 3–30–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subseuent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers:

RTD/EU (SD)–64, for the retransfer of 0.008 grams of uranium enriched to 2.77 percent in the isotope uranium-235 and 0.000024 grams of plutonium contained in an irradiated fuel pin sample for burnup analysis, from Switzerland to Belgium. RTD/EU (SD)–65, for the retransfer of 12 grams of uranium enriched to 2.77 percent in the isotope uranium-235 and 0.04 grams of plutonium contained in irradiated fuel pin samples for burnup analysis, from Switzerland to Belgium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 25, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–7044 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

Announcement of Change in Location of Public Hearing on Draft Environmental Impact Statement, Remedial Action at Weldon Spring Site

AGENCY: Department of Energy.

ACTION: Notice of change in location of public hearing.

SUMMARY: The Department of Energy (DOE) has changed the location of the public hearing to be held with respect to the draft environmental impact statement.

DATE AND TIME: The public hearing is scheduled for April 10, 1987, at 7:30 p.m.

ADDRESS: Hollenbeck Junior High School Gymnasium, 4555 Central School Road, St. Charles, Missouri.

SUPPLEMENTARY INFORMATION: In the Federal Register of Monday, March 9, 1987, on page 7190 (FR Doc. 87–4822), DOE announced the availability of the draft Environmental Impact Statement (DOE/EIS–117D), Remedial Action at the Weldon Spring Site and the intent to conduct a public hearing on April 10, 1987, 7:30 p.m. at Lindenwood College, St. Charles, Missouri. In recent weeks there has been a strong indication of concern from the local community that the proposed hearing location at the Lindenwood College would have neither the capacity, nor the parking facilities, to adequately handle the possible attendance for the public hearing. In order to be more responsive to the local community's concerns, the DOE is changing the hearing location to Hollenbeck Junior High School Gymnasium, a facility that more than triples the seating capacity and provides more than adequate parking. Notices will be posted at Lindenwood College indicating the change in location for the hearing. Local news releases and advertisements, as well as radio public service announcement will be sent out well in advance to advise the local community of the change in location.

FOR FURTHER INFORMATION CONTACT: Rodney R. Nelson, Project Manager, (314–441–8978).

William R. Voight, Jr.,

Director, Office of Remedial Action and Waste Technology.

[FR Doc. 87–7045 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on April 7, 1987, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The agenda for the meeting is follows:

1. Opening remarks.

2. Approval of Record Note of IAB Meeting of October 14, 1986.

3. Correspondence and Communications with IEA and Reporting Companies.

4. Report from Subcommittee C.

5. Papers in Preparation for Governing Board Meeting:

a. IEA Emergency Response Systems—Background Paper for the Governing Board Meeting at Ministerial Level.

b. Quality of Stocks.

6. Emergency Stocks:

a. Emergency Reserves and Accessible Stocks—Terms and Calculations.

b. Emergency Minimum Operating Requirements—Draft Terms of Reference.

7. Other Emergency Preparedness Issues:

a. Progress on Procedures for Consultations on Coordinated Stockdraw and Other Measures.

8. Other Topics:

a. Middle East Oil Supply—the Hormuz Factor.

b. Demand Restraint and Deliveries of International Aviation Fuels.

c. End March Oil Market Report.

d. Base Period Final Consumption (1Q86–4Q86).

9. IAB Organization, Leadership and Succession.

10. Date of Next Meeting and Future Business.

II. A meeting of the IAB will be held on April 8, 1987, at the offices of the IEA at the aforesaid address beginning at 10:00 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.

2. Summary Record of the 55th Meeting.

3. Preparation for Governing Board Meeting at Ministerial Level.

—IEA Emergency Response Systems Background Paper for the Governing Board Meeting at Ministerial Level.

—Quality of Stocks.

4. Emergency Stocks.

—Emergency Reserves and Accessible Stocks—Terms and Calculations.

—Emergency Minimum Operating Requirements—Draft Terms of Reference.

5. Other Emergency Preparedness Issues.

—Workshop on Practical Aspects of Oil Consumption Reduction Measures—Status of Preparations.

—Progress on Procedures for Consultations on Coordinated Stockdraw and Other Measures.

—Review of Member Countries' Emergency Response Programs:
Greece
Luxembourg
Norway
Turkey

—Summary of Member Countries' Emergency Response Program Reviews.

—Questionnaire for Next Cycle of Emergency Response Program Reviews.

6. Other Topics.

—Middle East Oil Supply—The Hormuz Factor.

—Status of EUROILSTOCK.

—Demand Restraint and Deliveries of International Aviation Fuels.

—End March Oil Market Report.
—Base Period Final Consumption (1Q86–4Q86).

7. Any other business.
8. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, and invitees of the SEQ.

Issued in Washington, DC, March 26, 1987.

J. Michael Farrell,

General Counsel.

[FR Doc. 87–7046 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

Conduct of Employees; Waiver; Compensation; Supervisory Employee

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Dr. Iran L. Thomas is under consideration for the position of Director of Materials Sciences in the Office of Energy Research of the Department of Energy. Dr. Thomas has an interest in the Retirement Program Plan for Employees of Martin Marietta Energy Systems, Inc., as a result of his past employment at Oak Ridge National Laboratory. He also has an interest in the Occidental Petroleum Corporation Retirement Plan as the result of his past employment with that company.

It has been established to my satisfaction that requiring Dr. Thomas to divest his interests in the Retirement Program Plan for Employees of Martin Marietta Energy Systems, Inc., and in the Occidental Petroleum Corporation Retirement Plan would impose an exceptional hardship on him, and that such interests are vested pension interests within the meaning of section 602(c)of the Act. Accordingly, I have granted Dr. Thomas a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interests in the Retirement Progran Plan for Employees of Martin Marietta Energy Systems, Inc., and in the Occidental Petroleum Corporation Retirement Plan.

In accordance with section 208, Title 18, United States Code, Dr. Thomas will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon either Martin Marietta Energy Systems, Inc., or its parent, Martin Marietta Corporation, or upon Occidental Petroleum Corporation unless his supervisor and the Counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: March 20, 1987.

John S. Herrington,

Secretary of Energy.

[FR Doc. 87–7000 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Record of Decision on Proposed IP–PF Rate Link; Direct Service Industry Options Environmental Impact Statement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of decision.

SUMMARY: BPA has decided to adopt a formalized link between the rates charged its direct-service industry (DSI) customers and the rates charged its public body and cooperative (preference) customers. BPA's proposed rate link, referred to as the IP–PF rate link, establishes a methodology for determining the level of the DSI rates for future rate filings.

BPA sells power to the DSIs under the Industrial Firm Power (IP) rate schedule and, for those aluminum smelter DSIs electing to participate, the Variable Industrial Power (VI) rate schedule. The charges contained in the VI rate schedule are tied to the IP rate schedule. The current IP rate schedule contains three rate options: The IP Premium rate, the IP Standard rate, and an Incentive rate. The IP Premium rate developed for the current rate period recognizes that contract service to the entire DSI load is essentially firm given the projected availability of BPA's firm surplus to be used, if necessary, to serve the DSI load. The IP Standard rate provides for a lower quality of service to the first quartile (one-fourth) of the DSI load relative to that quality of service provided under the IP Premium rate. An Incentive rate is also available at the Administrator's discretion. BPA's preference customers purchase power under the Priority Firm Power (PF) rate schedule and, potentially, under the New Resource Firm Power (NR) rate schedule.

The IP–PF rate link is proposed as a long-term rate methodology that would be used in future wholesale rate adjustment proceedings as part of the determination of the level of the IP Standard and IP Premium rates (or their successor rates) and, thus, the parameters of VI rate. The IP–PF rate link is proposed to be effective for the period commencing July 1, 1985 (the effective date of the 1985 rates), through the last rate period commencing before June 30, 1990.

Section 7(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) provides that DSI rates after June 30, 1985, should be based on the applicable wholesale rates to BPA's preference customers plus a margin based on the typical margins, in addition to power and transmission costs, that preference customers include in the rates to their industrial consumers. Section 7(c)(2) also requires that this margin-based IP rate be subject to a "floor rate" test, which provides for a minimum DSI rate level. Section 7(c)(3) provides for a credit to the DSIs for the value of reserves that the DSIs provide by allowing BPA to restrict portions of their loan under certain conditions.

BPA implemented the post-1985 rate directives of the Pacific Northwest Power Act for the first time in its 1985 wholesale power rate filing. Although the current IP rates were defined by the floor rate, the IP Premium margin (the margin for determining the margin-based IP Premium rate), the IP Standard margin (the margin for determining the margin-based IP Standard rate), and the value of reserves (VOR) credit derived for the 1985 rate filing provide a basis for defining the relationship between the IP and PF rates in future rate filings. This current relationship is comprised of a net Premium margin of 0.92 mill per kilowatthour (IP Premium margin less VOR credit) and a net Standard margin of 0.38 mill per kilowatthour (IP Standard margin less VOR credit).

Under the proposed IP–PF rate link, the net Premium margin and the net Standard margin derived for the 1985 wholesale rate filing will be adjusted for inflation in the development of the IP rates for future rate filings.

IP rate levels determined by the IP–PF rate link will continue to be subject to the DSI floor rate test. DSIs purchasing power under the IP rate will be subject to adjustment clauses, which may result in annual surcharges and/or credits during a rate period, that are applicable to preference customers, assuming that the levels of the IP Premium and the IP Standard rates (or their successor rates) are defined by the IP–PF rate link rather than by the floor rate.

For the duration of the IP–PF rate link, BPA will continue to make available to the DSIs, under the IP Premium rate (or its successor rate), the quality of service to which they are entitled under their Power Sales Contracts with BPA. Under the IP Standard rate (or its successor rate), quality of service to the DSIs for the duration of the IP–PF rate link will be that quality of service specified by the Variable Rate Contract for service under the Variable Industrial Power (VI–86) discounted rate.

Implementation of an IP–PF rate link is one of three options, or actions, that BPA considered for the purpose of stabilizing DSI loads and thereby improving BPA's revenue stability and facilitating resource operational planning. BPA has already implemented the VI rate to aluminum smelting DSIs and currently is in the process of implementing another option, a conservation/modernization (Con/Mod) program directed at aluminum smelting DSIs.

BPA prepared the Direct Service Industry Options Environmental Impact Statement (EIS) (DOE/EIS–0123F) to analyze the alternatives for each of the three options, the no action alternative, and the cumulative impacts of implementing more than one option.

BPA considered two alternative periods of duration, through Fiscal Year (FY) 1991 and through June 30, 2001, for the IP–PF rate link in the EIS. The alternative of duration through FY 1991 corresponds closely with the effective IP–PF rate link period included in BPA's final decision. BPA also considered two alternative methods of implementation, contract modification and policy implementation. BPA selected the policy alternative.

BPA based its decision to implement the IP–PF rate link on legal requirements; ability to meet the need (that is, to stabilize DSI loads in order to facilitate BPA's resource operational planning and to stabilize BPA revenues); BPA's rate design objectives; and consideration of physical and socioeconomic impacts.

A 5-year duration is environmentally preferred over no action and duration through June 30, 2001. The policy alternative is environmentally preferred over contract modification. The 5-year duration alternative with policy implementation, a combination which closely corresponds to the proposed IP–PF rate link, is superior to no action, the alternative having contract modification, and duration through June 30, 2001, when evaluated on the basis of all the decision factors.

BPA does not plan any programs to monitor environmental effects of the proposed IP–PF rate link and is not undertaking any specific mitigation or monitoring.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, OR 97208, telephone (503) 230–5136.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Energy, Bonneville Power Administration, has considered three options to help stabilize the electrical load of BPA's DSI customers in order to enhance BPA's revenue stability and facilitate resource operational planning. The three options were: (1) A variable rate to the aluminum smelter DSIs based on market prices for aluminum; (2) a conservation/modernization (Con/Mod) program directed toward the aluminum smelter DSIs; and (3) a formalized link between the rates charged the DSIs and the rates charged BPA's preference customers (the IP–PF rate link). The three types of options, or actions, are not alternatives to each other since each could be implemented independently. BPA already has implemented the Variable Industrial Power (VI–86) rate for aluminum smelter DSIs and is in the process of implementing the Con/Mod program.

Sections 7(c)(2) and 7(c)(3) of the Pacific Northwest Power Act provide that DSI rates after June 30, 1985, shall be based on the applicable wholesale rates to BPA's preference customers, plus a margin based on the typical margins included in preference customers' rates to their industrial consumers, less a credit for the value of reserves that the DSIs provide by allowing BPA to restrict portions of their load under certain conditions. Section 7(c)(2) also provides for a minimum DSI rate level, or a floor rate, based on the DSI rates in effect for the 12-month period preceding July 1, 1985.

BPA sells power to the DSIs under the IP rate schedule and, for those aluminum smelting DSIs electing it, the VI rate schedule. The charges contained in the VI rate schedule are tied to the IP rate schedule. The IP rate schedule contains three rate options: The IP Premium rate, the IP Standard rate and an Incentive rate. The IP Premium rate developed for the current rate period recognizes that contract service to the entire DSI load is essentially firm given the availability of BPA's unsold firm surplus. The IP Standard rate provides for a lower quality of service to the DSI first quartile relative to the quality of service provided under the IP Premium rate. The Incentive rate is available for implementation at the Administrator's option. BPA's preference customers purchase power under the PF rate schedule and, potentially, under the NR rate schedule.

For the 1985 wholesale power rate filing, the IP rate level defined by the floor rate provisions of section 7(c)(2) of the Pacific Northwest Power Act was higher than the margin-based rate levels defined by the applicable wholesale rate and the results of BPA's section 7(c)(2) Industrial Margin Study. Therefore, the current IP rates are defined by the floor rate. BPA's proposed IP–PF rate link provides a methodology for determining IP rate levels, which also will be subject to the floor rate test, for future rate filings.

BPA prepared an EIS to analyze the potential environmental impacts of a no action alternative and alternatives for each of the three DSI options. The EIS also evaluated the cumulative effects of implementing more than one option. The major effects examined included aluminum smelter operations, resource operations and development, and physical and socioeconomic environmental impacts.

This Record of Decision pertains only to the IP–PF rate link, and does not resolve issues relating to the Variable rate or the Con/Mod program. However, in making its decision on the IP–PF rate link, BPA considered the potential impacts identified in the EIS of implementing an IP–PF rate link alone or in combination with one or both of the other two options.

The Draft EIS was circulated to the public for review in January 1986, and comments were accepted through February 21, 1986. The Final EIS, which was based on the Draft EIS and comments received on the Draft EIS, was distributed on May 8, 1986. Copies of the Draft and Final EISs are available

upon request from the BPA Environmental Manager (address above).

Decision

BPA has decided to adopt a formalized rate link between the rates charged its DSI customers and the rates charged its preference customers. This link is referred to as the IP–PF rate link. The IP–PF rate link is proposed to be effective for the period commencing July 1, 1985 (the effective date of the 1985 rates), through the last rate period commencing before June 30, 1990.

BPA implemented the post—1985 rate directives of the Pacific Northwest Power Act for the first time in its 1985 wholesale power rate filing. Although the current IP rates were defined by the floor rate, the IP Premium margin (the margin for determining the margin-based IP Premium rate), the IP Standard margin (the margin for determining the margin-based IP Standard rate), and the value of reserves (VOR) credit derived for the 1985 rate filing provide a basis for defining the relationship between the IP and PF rates in future rate filings. This current relationship is comprised of a net Premium margin of 0.92 mill per kilowatthour (IP Premium margin less VOR credit) and a net Standard margin of 0.38 mill per kilowatthour (IP Standard margin less VOR credit). Under the proposed IP–PF rate link, the net Premium margin and the net Standard margin derived for the 1985 wholesale rate filing be adjusted for inflation in the development of the IP rates for future rate filings.

The applicable wholesale rate will be determined for each separate rate filing. The margin-based IP Standard rate developed for future rate filings will continue to be subject to the DSI floor rate test.

DSIs purchasing power under the IP rate schedule will be subject to the same automatic adjustment clauses that are applicable to BPA's preference customers, assuming that the levels of the IP Standard and the IP Premium rates (or their successor rates) are defined by the IP–PF rate link rather than the DSI floor rate. For the duration of the IP–PF rate link, BPA will continue to make available to the DSIs, under the IP Premium rate (or its successor rate) the quality of service to which they are entitled under their Power Sales Contracts with BPA. Under the IP Standard rate (or its successor rate), the quality of service to the DSIs for the duration of the IP—PF rate link will be the quality of service specified by the Variable Rate Contract for the service under the VI–86 discounted rate.

Alternatives

Relative to the IP–PF rate link, a no—action alternative, two IP–PF rate link duration alternatives, and two implementation alternatives were considered in the EIS. BPA based its conclusions regarding environmental impacts of the proposed IP–PF rate link on the analysis of the 5-year duration alternative and the policy alternative in the EIS, since these alternatives closely correspond to features of the proposed IP–PF rate link.

A. No-Action Alternative

The no-action alternative assumed continuation of DSI rate provisions that were in effect prior to implementation of the VI–86 rate. That is, it assumed that the IP rate schedule provided for an IP Premium rate, an IP Standard rate, and when BPA revenues would be increased by an incentive rate offering, a discretionary Incentive rate. The no-action alternative also assumed a continuation of current BPA procedures for development of the IP rate schedule. Specifically, it assumed that the values of the IP Premium margin, the IP Standard margin, and the VOR credit would be determined in each rate proceeding rather than being predetermined for an extended period through a formalized rate link.

B. Duration Alternatives

The two duration alternatives analyzed for the EIS were: (1) A 5-year duration; and (2) duration through June 30, 2001.

The 5-year duration alternative assumed that the IP–PF rate link would be in effect through FY 1991. This alternative closely corresponds to the duration under the IP–PF rate link which BPA is proposing to adopt. Under this alternative, rate uncertainty perceived by the DSIs would be less than under the no action alternative (DOE/EIS–0123F, p. 26).

The second alternative would extend the period of the IP–PF rate link through the expiration date of the DSI Power Sales Contracts, through June 30, 2001. The DSI, may regard long-term rate uncertainty associated with this alternative to be less than the uncertainty associated with a 5-year duration (DOE/EIS–0123F, p. 26).

C. Implementation Alternatives

The two implementation alternatives analyzed for the EIS were: (1) The policy alternative; and (2) the contract modification alternative.

Under the policy alternative, the IP–PF rate link would be implemented through a long-term policy. Conceivably, a rate link policy could be subject to changes, prior to the end of the originally specified expiration date for the rate link, following ratemaking procedures provided under section 7(i) of the Pacific Northwest Power Act (DOE/EIS–0123F, p. 26). The policy alternative corresponds to BPA's proposed means of implementating the IP–PF rate link.

Under the contract modification alternative, the IP–PF rate link would be implemented contractually. Implementation through contract modification would provide less flexibility for BPA to modify, if necessary, the IP–PF rate link provisions relative to the flexibility provided under the policy alternative. However, the contract modification alternative would provide somewhat greater rate certainty and, therefore, planning certainty to the DSIs than the policy alternative (DOE/EIS–0123F, p. 26).

Decision Factors

BPA based its decision on legal requirements, ability to meet the need, rate design objectives, and a consideration of environmental impacts.

A. Legal Requirements

Section 7(a) of the Pacific Northwest Power Act requires BPA to set rates "in accordance with sound business principles" to produce revenues tht recover the Administrator's costs and allow BPA to meet its obligations to the U.S. Treasury. Section 7(a) directs that these rates be set in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act of 1974 (Transmission Act), 16 U.S.C. section 838; section 5 of the Flood Control Act of 1944; and the other provisions of the Pacific Northwest Power Act. Section 9 of the Transmission Act requires that rates be established "with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles," while having regard to recovery of costs and repayment to the U.S. Treasury. Substantially the same requirements are set forth in section 5 of the Flood Control Act.

Section 7(c)(1)(B) of the Pacific Northwest Power Act directs that rates to the DSIs be established after July 1, 1985, at a level the Administrator determines to be equitable in relation to the retail rates charged by public bodies to their industrial customers. The process for making that determination is outlined in section 7(c)(2). The determination is to be based on the rate BPA charges its preference customers

plus an industrial margin, taking into account numerous cost and load characteristic factors. Section 7(c)(2) also states that the rates shall not be less than rates "in effect for the contract year ending June 30, 1985" (the floor rate). The rates in effect for the contract year ending June 30, 1985, were set to recover a revenue level determined by the cost recovery requirements of section 7(c)(1)(A). Finally, section 7(e) states that nothing in the Pacific Northwest Power Act prohibits the Administrator from establishing any particular rate form.

Policy implementation of the IP–PF rate link with a 5-year duration could enhance BPA's revenues compared to no action, because it would reduce planning uncertainty facing the DSIs. It also could facilitate increased load stability and possibly augment the benefits of the Variable rate (DOE/EIS–0123F, pp. 26, 115, 122).

Implementation of the rate link through contract modification or extending the rate link duration to June 30, 2001, contains greater risks compared to policy implementation for a 5-year period. Extending the duration of the rate link to June 30, 2001, would increase the risk that the rate link could become "outdated." That is, there is greater risk under a longer duration that IP rates defined by an updated calculation of the margin and the VOR credit in some future rate period would be significantly different from IP rate levels determined by an extended IP–PF rate link. This potentially would result in IP rate levels inconsistent with the post-1985 rate directives of section 7(c) of the Pacific Northwest Power Act. Therefore, a 5-year duration with policy implementation is superior to no action and the other alternatives in meeting BPA's legal requirements.

B. Ability to Meet the Need.

BPA evaluated the ability of the no-action alternative and of each of the IP–PF rate link alternatives under consideration to meet the underlying need; that is, to stabilize the DSI load in order to facilitate resource operational planning and to stabilize BPA's revenues (DOE/EIS–0123F, p. 1).

The no-action alternative does not meet the need for stabilizing the DSI load. Under no action, BPA would continue to recalculate the margin and the VOR credit for each rate filing. This would perpetuate the rate uncertainty perceived by the DSIs, undermining their ability to plan and, potentially, undermining DSI load stability.

A 5-year duration for the rate link would provide the DSIs with more rate certainty compared to no action. A longer duration, through June 30, 2001, would further reduce rate uncertainty to the DSIs and could result in slightly more DSI load stability than a 5-year duration (DOE-EIS–0123F, p. 26). Implementation of the rate link through a policy would reduce rate uncertainty relative to no action, but would result in slightly greater rate uncertainty than if the IP–PF rate link were implemented contractually.

In summary, the no-action alternative would not provide sufficient rate predictability to stabilize the DSI load. Policy implementation with a 5-year duration adequately meets the need for increasing rate predictability necessary for stabilizing the DSI load. Contractual implentation and duration through June 30, 2001, would further reduce rate uncertainty facing the DSIs and could result in lightly more DSI load stability than policy implementation for a 5-year period. All of the IP–PF rate link alternatives would enhance the benefits of the VI rate and a Con/Mod program to DSI load stability and BPA revenue stability.

C. Rate Design Objectives.

In addition to meeting legal requirements, BPA's rates are designed to: (1) Meet BPA's revenue requirement while distributing the burden in an equitable manner among recipients of the service; (2) encourage conservation and minimize environmental impacts; and (3) encourage efficient use of resources by reflecting costs incurred and benefits received. Consideration also is given to rate continuity, ease of administration, revenue stability, customer acceptability, and ease of understanding.

Policy implementation of the IP–PF rate link and a 5-year duration potentially provide greater revenue stability than the no action alternative, and would not expose BPA to long-term risk of revenue underrecovery that may occur under the no action alternative. Also, policy implementation with a 5-year duration would receive greater acceptance among BPA'a non-DSI customers than any alternative involving duration through June 30, 2001, or contract modification. All the rate link alternatives provide more rate continuity than does the no action alternative. With respect to the other rate design objectives, there is no significant difference among alternatives.

D. Environmental Impacts.

The environmetnal impacts of the IP–PF rate link stem from the perception by the aluminum companies of the degree of future rate and planning certainty provided. It was not possible to develop a quantitative analysis of how the aluminum companies might modify their business and operational decisions in response to a rate link. This is because the rate link involves the issue of rate predictability and its effect on DSI loads, which is difficult to estimate quantitatively. Therefore, the environmental and socioeconomic impacts of the IP–PF rate link alternatives were analyzed qualitatively in the EIS.

The IP–PF rate link is not likely to affect operations, and therefore environmental impacts, of the least or most efficient aluminum smelters since rate certainty alone would not affect their plant investment or closure decisions. For those smelters intermediate in efficiency, the additional rate and planning certainty provided by an IP–F rate link could encourage investment in plant modernization and forestall plant closures because of greater assurance of investment recovery (DOE/EIS–0123F, p. 115). Thus, the physical environmental impacts of some plants may continue with an IP–PF rate link when otherwise the plants would have closed and the impacts ceased. However, the physical impacts of the aluminum smelters are regulated. Operation of the smelters, in general, does not result in environmental damage which has been found unacceptable by the responsible regulatory agencies. The environmental problems which have been associated with the smelters already have been addressed. Continued operation of smelters which otherwise would close would preclude or forestall significant, localized adverse socioeconomic effects.

To the extent that aluminum smelter electrical demands may be higher because some smelters choose not to close, or lower because some smelters choose to modernize and improve their electrical efficiency as a consequence of an IP–PF rate link, the environmental impacts associated with the generation of electricity would be affected accordingly (DOE/EIS-0123F, p. 115).

The IP–PF rate link is not likely to significantly affect the non-aluminum DSIs, since electricity costs are, for most of those industries, less important in their business decisions than for the aluminum companies (DOE/EIS–0123F, p. 28). However, the IP–PF rate link is expected to have a generally beneficial, stabilizing effect on the rates of all nonaluminum customers of BPA (DOE/EIS–0123F, p. 115), and thus may have positive regional socioeconomic benefits.

BPA has implemented the Variable rate for aluminum smelters and is in the process of implementing its Con/Mod program for aluminum smelters. Both of these options also were addressed in the DSI Options EIS. Implementing an IP–PF rate link will slightly augment the cumulative impacts of these other actions, both of which are also directed at stablizing aluminum smelter load (DOE/EIS–0123F, p. 122).

Maintaining the IP–PF rate link through FY 2001 would enhance aluminum smelters DSIs' planning certainty throughout the term of the DSIs' current power sales contracts, and could therefore lead to a greater degree of plant modernization. At the same time, maintaining the link for a long period of time increases the risk that the aluminum customers, or BPA's other customers, would experience inequities if the initial formulation of the link were no longer appropriate for determining the IP rate (i.e., if the true values of the margin and/or VOR credit change over time in a manner inconsistent with the rate link). Limiting the duration of the link to 5 years carries less risk of error but, relative to a longer duration, also provides somewhat less long-term planning certainty to the aluminum companies. The means of implementing the IP–PF rate link, through a policy or a contract, also carries a similar tradeoff between planning certainty for the aluminum companies and risk of rate inequity. Thus, contract modification with a longer duration ultimately could result in higher rates to the aluminum companies and/or BPA's other customers in the future than would result with policy implementation for a 5-year period. Therefore, there may be a greater risk of adverse long-term socioeconomic impacts under contract modification with a longer duration than under policy implementation with a 5-year duration.

Conclusion Supported by the Decision Factors

Of the alternatives considered, the 5-year duration alternative with policy implementation is superior to no action and the other alternatives in fulfulling BPA's legal requirements and accomplishing BPA's rate design objectives. Policy implementation with a 5-year duration meets the need for enhancing BPA revenue stability and resource planning certainty. Furthermore, policy implementation with a 5-year duration provides for positive socioeconomic impacts associated with more stable DSI loads relative to no action. Those positive socioeconomic impacts would tend to outweigh any negative physical impacts associated with increased DSI operations. Finally, policy implementation of the IP–PF rate link with a 5-year duration could carry less risk of negative socioeconomic impacts than could occur if the rate link were extended to June 30, 2001, and/or implemented contractually. Therefore, policy implementation of the IP–PF rate link with a 5-year duration is superior to no action, contract modification, and duration through June 30, 2001, when evaluated on the basis of all the decision factors.

Environmentally Preferred Alternatives

Policy implementation of the IP–PF rate link and a 5-year duration are environmentally preferred over no action and the other alternatives. A 5-year duration with policy implementation minimizes the possibility that either the DSI customers or BPA's other customers will experience rates higher than they would have without the rate link. Relative to no action, a rate link incorporating these two alternatives would provide greater cut predictability to the DSIs, and would be in effect for a sufficient duration to enhance the chances of continued operations at those smelters which are at risk of closure under no action. Such a rate link would allow them to recoup investments in smelter modernization, especially when combined with the Variable rate and Con/Mod. Furthermore, there is less risk of adverse rate impacts to either the DSIs or other BPA customers under policy implementation with a 5-year duration than under contract modification or duration through June 30, 2001. Thus, an IP–PF rate link incorporating policy implementation and a 5-year duration has the best potential for avoiding adverse socioeconomic impacts in both the communities where smelters are located and elsewhere in the region. To the extent that a 5-year duration with policy implementation would result in higher smelter operating levels, physical enviromental impacts which would have ceased under no action would continue to occur. These physical impacts are closely regulated, however, and would be outweighed by the positive socioeconomic effects of a 5-year duration with policy implementation.

Mitigation

Significant adverse socioeconomic impacts are not likely to result from BPA's proposed IP–PF rate link or cumulatively from the IP–PF rate link with the Variable rate and Con/Mod.

Differences in physical impacts could result if aluminum plants remain in operation or modernize which otherwise would close. However, all of the aluminum plants are required to comply with Federal and State laws and regulations for protection of the environment. Air pollution control equipment already has been installed in the plants to comply with regulatory requirements. Existing groundwater pollution problems from past practices at some smelters are being addressed by State and Federal environmental agencies. Facilities for storage of spent potliners have been improved at some of the plants, reducing chances for further contamination from cyanide-containing leachate. Plant modernization measures are not expected to result in substantial adverse environmental impacts. They are more likely to reduce the smelters' impacts and, in any event, are subject to regulatory control (DOE/EIS–0123F, pp. 102–105). Therefore, specific mitigation measures for the IP–PF rate link are not needed.

BPA conducts fish and wildlife and conservation programs independent of any decision on an IP–PF rate link. These programs mitigate any potential impacts related to electric power supply and to BPA's power marketing activities generally.

BPA's existing conservation programs, begun in 1981, are targeted toward all consumer sectors in the region and will help mitigate any need for additional generating resources.

Any changes in hydroelectric resource generation that might occur as a result of changes in aluminum smelter loads will be limited by factors constraining river operations. These factors include flood control, navigation, recreation, and mitigation for fish. Under the terms of the Pacific Northwest Power Act, BPA is required to protect, mitigate, and enhance fish and wildlife to the extent affected by development and operation of hydroelectric projects on the Columbia River or its tributaries. BPA, the U.S. Army Corps of Engineers, and the Northwest Power Planning Council will continue to develop and implement effective spill, bypass, and transportation programs to facilitate passage of downstream migrating smolts.

Implementation of specific conservation and fish and wildlife plans, programs, and projects will be undertaken independent of BPA's decision on the IP–PF rate links and will undergo separate decisionmaking processes. Furthermore, impacts of the IP–PF rate link would be indistinguishable from impacts arising from many other factors. Because of the complexity of these factors, any monitoring to assess impacts

specifically arising from the rate link, to enable improved impact analysis for similar actions, or to carry out mitigation would be speculative and impractical. Therfore, no monitoring or enforcement programs are adoped.

Issued in Portland, Oregon, on March 20, 1987.

James J. Jura,

Administrator.

[FR Doc. 87-6999 Filed 3-30-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-12-NG]

The Brooklyn Union Gas Co.; Application for Blanket Authorization to Import Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 5, 1987, of an application from The Brooklyn Union Gas Company (Brooklyn Union) for blanket authorization to import natural gas, primarily for its own system supply and sales at retail. Authorization is requested to import up to 50 Bcf for a two-year period beginning 60 days after ERA receipt of the application, or upon ERA approval of the application, whichever is later. Brooklyn Union proposes to import natural gas from reliable producer, pipeline or marketer sources in Canada, and from other foreign locations if available on competitive terms. The imported gas would be purchased at rates which, when delivered, would be competitive with comparable domestic gas supplies available to Brooklyn Union. Existing pipeline facilities will be used for the transportation of the requested imports and Brooklyn Union proposes to submit quarterly reports giving details of individual transactions within thirty days following the end of each calendar quarter.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 30, 1987.

FOR FURTHER INFORMATION:

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The application asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 30, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are unncessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official, record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Brooklyn Union's application is available for inspection and copying in the Natural Gas Division Docket Room GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 24, 1987.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-7001 Filed 3-30-87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Uranium Industry Annual, EIA-858; Domestic Uranium Mining Production Report, EIA-851; Semiannual Report on Status of Reactor Construction, EIA-254

AGENCY: Energy Information Administration, U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) solicits comments on the extension of its Nuclear and Uranium Data Reporting Forms. In accordance with the Paperwork Reduction Act of 1980, the EIA conducts an assessment to provide

the general public with an opportunity to comment on current nuclear and uranium data forms. This assessment will ensure the EIA that current data collection systems provide the respondents with clear instructions on completing the forms, that respondent burden is minimized to the extent possible, and that survey questionnaires are designed in the proper format for ease in reporting.

DATE: Written comments must be submitted on or before April 30, 1987.

ADDRESS: Comments should be submitted to William Liggett, Data Collection Project Manager, Energy Information Administration, EI-531, Mail Stop 2G-090, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION OR COPIES OF FORMS AND INSTRUCTIONS: Copies of Forms EIA-858, EIA-851 and EIA-254 and instructions can be obtained from Mr. William Liggett or Ms. Theresa Payne at the above address or by calling (202) 586-6242 or (202) 586-1018, respectively.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Action
III. Request for Comments

I. Background

In keeping with the provisions stated in the Department of Energy Organization Act (Public Law 95-91), the Energy Information Administration is responsible for collecting, publishing, and otherwise providing to the Congress, the Executive Branch, and the public, quality statistical data on the status of the domestic uranium and nuclear industries.

Form EIA-858, "Uranium Industry Annual Survey," is a comprehensive study on the uranium industry in the United States. This form collects data on domestic uranium exploration, reserves, production, mining, milling, and marketing. It also collects financial data form every company engaged in any aspect of the above-mentioned activities. The purpose of collecting these data is to provide a comprehensive statistical picture of recent activities of the industry for members of Congress, Federal and State agencies, the uranium and utility industries, and the general public. Further, the data collected on this form are used by the Secretary of Energy to make an annual assessment of the viability of the uranium industry as required by Section 170b of the Atomic Energy Act of 1954, as amended in 1983 by Pub. L. 97-415.

Form EIA-851, "Domestic Uranium Mining Production Report," collects data on uranium concentrate production. These data are used by the Department of Energy to monitor the status of the major domestic uranium producers.

Form EIA-254, "Seminannual Report on Status of Reactor Construction," collects data on the status, labor, construction milestones, and actual and estimated costs of nuclear power plants under construction in the United States. These data are collected for each nuclear power plant under construction until the unit reaches commercial operation. The information provided from this survey is intended primarily for analysts to assist in assessing nuclear power plant construction costs and schedules, for determining the current status of nuclear generating capacity, and for determining potential future requirements for uranium production and enrichment facilities.

The EIA is proposing a 3-year extension through December 31, 1990, of these three forms to continue its nuclear and uranium data collection responsibilities.

II. Current Action

At this time, the EIA proposes to make no revisions to Forms EIA-858, EIA-851, or EIA-254. Public comments on this proposal will be taken into consideration before a final decision is made.

III. Request for Comments

The following general guidelines are provided to assist in the preparation of responses. When commenting, please indicate the form(s) to which your comments apply.

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, would you require to complete and submit the required form(s)?

E. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a Potential Data User

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purposes would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in these forms.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these data surveys; they also will become a matter of public record.

Statutory authority

Secs. 5(a) and (b), 13(a) and (b), and 52 of Pub. L. 93-275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. 764(a) and (b), 772(a) and (b), and 790a).

Issued in Washington, DC on March 24, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87-7002 Filed 3-30-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-3178-3]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to GWF Power Systems Co. (EPA Project Number SJ 86-08); Hanford, Kings County, CA

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on January 28, 1987 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 25 MW atmospheric fluidized bed cogeneration facility to be located in Hanford, Kings County, California. The permit is subject to certain conditions, including an allowable emission rate (2-hour average) as follows: for SO_2—the more stringent of 10.2 lbs/hr or 20.2 ppm at 3% O_2, for NO_x—the more stringent of 10.2 lbs/hr or 28 ppm at 3% O_2, and for CO—the more stringent of 4.1 lbs/hr or 200 ppm at 3% O_2.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of limestone injection for SO_2 control, and the use of low bed temperature, staged combustion, and ammonia injection for the control of NO_x emissions.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 1, 1987.

Dated: March 16, 1987.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 87–6988 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

[Docket No. A–10–FRL 3177–6]

Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On November 13, 1986, E.I. DuPont de Nemours and Company, Inc. (DuPont) submitted a request to additionally modify the fuel waive granted to it on January 10, 1985 (50 FR 2615) and subsequently reconsidered and modified on October 31, 1986 (51 FR 39800). The request seeks approval of an alternative corrosion inhibitor, DMA–67, to be used in DuPont's gasoline-alcohol fuel. EPA considers this to be a request for modification of the waiver under section 211(f) of the Clean Air Act (Act).

DATE: Comments should be submitted on or before April 30, 1987.

ADDRESS: Copies of the Information relative to this request are available for inspection in public docket EN–84–06 at the Central Docket Section (LE–131A) of the EPA, Gallery I—West Tower, 401 M Street, SW., Washington, DC, (202) 382–7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Sylvia I Correa, Attorney-Advisor, Field Operations and Support Division (EN–397F), U.S. E.P.A., 401 M Street SW., Washington, DC 20460, (202) 382–2635.

SUPPLEMENTARY INFORMATION:

I. Background

DuPont submitted a waiver application for a gasoline-alcohol blend on July 16, 1984. On January 10, 1985, the Administrator granted the waiver, subject to certain conditions. 50 FR 2615. On March 18, 1985, the Oxygenated Fuels Association (OFA), on behalf of its member companies, filed petitions for reconsideration. On April 22, 1986 (51 FR 15064), EPA granted OFA's petition for consideration and requested comments on several conditions which OFA had suggested should be rescinded or modified.

On October 31, 1986 (51 FR 39800) EPA decided to rescind one condition of the waiver and to modify certain other conditions. One of the conditions that was modified concerned which corosion inhibitor formulation could be used in the waived fuel. In that notice, EPA allowed the use of a corrosion inhibitor, Petrolite's TOLAD MFA–10, as an alternative to the inhibitor originally allowed under the waiver (DuPont's DGOI–100). At the same time, EPA invited other corrosion inhibitor manufacturers to submit test data to the Agency to establish, on a case-by-case basis, whether their formulations are environmentally acceptable.

II. Today's Announcement

DuPont is requesting that EPA allow the use of its corrosion inhibitor, DMA–67, in its gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver. DMA–67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent. The physical properties of DMA–67 are shown in Table 1 in the DuPont Docket EN–84–06, document No. VII–A–3.

Section 211(f)(1) of the Act, 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977, is shall be unlawful for any manufacturer or any fuel or fuel additive to first introduce into commerce or to increase the concentration of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.

Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4) provides that the Administrator may waive the prohibitions of section 211(f)(1) if the applicant has established that the fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act within 180 days or receipt of the application, the waiver shall be treated as granted.

Pursuant to section 211(f)(4), therefore, EPA will examine the date submitted by DuPont to determine whether this corrosion inhibitor formulation, DMA–67, would cause or contribute to such failures by vehicles using the DuPont waiver fuel.

Dated: March 19, 1987.

Don R. Clay,

Acting Assistant Adminsitrator for Air and Radiation.

[FR Doc. 87–6984 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

[A–2–FRL–3178–2]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between November 1, 1986 and January 31, 1987, the United States Environmental Protection Agency (EPA), Region II Office, issued one final determination, the New Jersey Department of Environmental Protection (NJDEP) issued one final determination, and the New York State Department of Environmental Conservation (NYSDEC) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II Office, the NJDEP, and the NYSDEC have made final determinations relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
To-Ricos, Inc	Aibontio, Puerto Rico.	Replacement of an existing 250 HP boiler with a 500 HP boiler.	EPA Region II	PSD Non-applicability Determination.	11/4/86
Jones Black River Services, Inc.	Fort Drum, New York.	Construction of a high temperature water cogeneration facility which consists of three 217 million BTU/hour coal and wood-fired boilers.	NYSDEC	PSD Applicability Determination.	12/24/86
American Ref-fuel [1] Company.	Newark, New Jersey.	Construction of three 758 tons per day municipal waste incinerators.	NJDEP	PSD Permit	1/9/87
Adirondack Resource Recovery Associates.	Hudson Falls, New York.	Installation of two 200 tons per day mass burning municipal solid waste combustion units.	NYSDEC	PSD Permit	1/19/87

[1] This project was proposed for approval on November 15, 1984. A public hearing was held on December 17 and 18, 1984. The permit was issued on December 11, 1985. The issuance of the permit was appealed to the EPA Administrator for review on January 28, 1986, but was denied by the Administrator on October 28, 1986. (Although the NJDEP was delegated authority to administer the PSD program (issue permits), it was not delegated the authority to hear appeals of PSD permits; this authority was retained by the EPA Administrator.) Since the appeal did not result in any modification of the permit issued by the NJDEP, the December 11, 1985 permit is in effect as issued.

This notice lists only the sources that have received final PSD determinations. Anyone wishing to review these determinations and related materials should contact the following offices:

EPA Region II Action

United States Environmental Protection Agency, Region II Office, Permits Administration Branch, 26 Federal Plaza, Room 432, New York, New York 10278

NJDEP Action

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering & Technology, 401 East State Street, CN 027, Trenton, New Jersey 08625

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: March 12, 1987.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 87-6987 Filed 3-30-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3178-1]

Science Advisory Board; Environmental Health Committee; Halogenated Organics Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Halogenated Organics Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on Monday, April 20, 1987, in Room 2034 of Breidenthal Hall at the University of Kansas; 2002 39th Street; Kansas City, Kansas 66103. The meeting will start at 9:00 a.m. and adjourn no later than 5:00 p.m.

The principal purpose of the meeting will be to review the scientific adequacy of a draft Criteria Document for Dichlorobenzene prepared by the Criteria and Standards Division in Office of Drinking Water and dated October, 1987. To obtain copies of (or further information about) the draft document, write to Dr. Edward Ohanian, Criteria and Standards Division [WH-550D], U.S. EPA, 401 M Street, SW, Washington, DC 20460, or call (202) 382-7571.

The meeting will be open to the public. Any member of the public desiring to attend or to provide comments to the Subcommittee should contact either Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW, Washington, DC 20460 or call (202) 382-4126 by c.o.b. April 16, 1987.

Dated: March 23, 1987.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 87-6986 Filed 3-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-4-FRL-3174-7]

Proposed Issuance of Demonstration Permits DP0601 and DP0602 to Conoco Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice and fact sheet.

SUMMARY: EPA Region VI is proposing to issue demonstration permits to Conoco Inc. for the discharge of treated drill cuttings to the Outer Continental Shelf of the Gulf of Mexico. The permits will allow demonstration of a newly developed technology for removing oil and grease from drill cuttings from oil-based and inversion emulsion drilling fluids. EPA intends to use data generated under the permits to propose a modification to general NPDES Permit GMG280000 and in connection with the continuing development of effluent limitations and guidelines for the offshore segment of the oil and gas extraction point source category.

DATE: Public Comments on the proposed demonstration permits will be received until April 30, 1987.

ADDRESSES: Written comments or requests for further information should be sumitted to Ms. Ellen Caldwell, Water Permits Branch (6W-PS), EPA Region VI, Allied Bank Tower, 1448 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 655-7190.

SUPPLEMENTARY INFORMATION: EPA Regions IV and VI (the Regions) issued a general National Pollutant Discharge Elimination System permit (the General Permit) regulating oil and gas exploration, development, and production activities in the Gulf of Mexico seaward of the outer boundary of the territorial seas of the States of Florida, Alabama, Mississippi,

Louisiana, and Texas. See 51 FR 24897 (July 9, 1986). Among other things, the General Permit prohibits the discharge of drill cuttings from oil-based or inverse emulsion fluids, both of which will be referred to as "oil-based" hereinafter.

Drill cuttings are the "shavings" created when a drill bit cuts through earth or rock. They are carried to the surface by the drilling fluids (also known as drilling "muds"), then removed by various types of solids control equipment. When oil-based drilling fluids are used, the initial separation of fluids and cuttings is normally performed mechanically by a shale shaker, leaving substantial amounts of oily drilling fluid on the cuttings. Historically, operators used cuttings washers in an attempt to remove this oil before discharging the cuttings. Nevertheless, cutting washers left about 10 percent by weight oil in the cuttings, much of which was apparently trapped in their porous components, e.g., shale particles. Long after the cuttings were discharged, this oil would occasionally work its way out of the cuttings and float to the surface, causing a visual sheen and violating the applicable "no discharge of free oil" standard.

There were no means, however, for predicting whether a specific batch of washing cuttings would result in such a violation. When the Regions drafted the General Permit, some operators were still discharging washed cuttings from oil-based muds, but most were barging them ashore for disposal. Faced with the apparent choice of allowing continued use of inadequate currings washers or requiring all operators to dispose of their cuttings ashore, the Agency implemented the "no discharge of free oil" standard by prohibiting the discharge of *any* drill cuttings removed from oil-based muds. This choice was not without adverse effects. As the Regions stated at 51 FR 24911:

> In response to the comment that this limitation will not encourage the development of cuttings treatment technology research, the Regions acknowledge this may be the case. However, until such time as the Regions have adequate information to demonstrate cuttings can be cleaned to achieve the no discharge of free oil limitation, the Regions do not believe they can authorize the discharge of cuttings from oil-based muds.

At the time, the Regions did not appreciate the degree to which cuttings treatment technology had advanced. During the comment period on the draft General Permit, SEDSCO, Inc. claimed it had developed a treatment technology which would remove oil better than cuttings washers. It did not, however, supply the Regions with sufficient data on the new technology for adoption of an alternative effluent limitation in the final General Permit. Subsequently, on July 25, 1986, Sedsco, Inc.'s successor, Thermal Dynamics, Inc. (TDI) filed a petition for review of the General Permit in the United States Court of Appeals for the Fifth Circuit. In an August 13, 1986 letter, TDI asked that the Regions administratively stay the prohibition on the discharge of drill cuttings removed from Oil-based drilling fluids. Two days later, on August 15, 1986, TDI filed a Motion for Stay of the same General Permit limitation in the Fifth Circuit. In connection with its requests for administrative and judicial stays, TDI argued that, in view of its newly developed technology, the general Permit's oil-based cuttings discharge prohibition was unnecessarily stringent for implementing a "no discharge of free oil standard" and that the Regions were thus subjecting OCS operators to unnecessary expense (estimated at $5,400 per drilling day) for shore disposal of cuttings.

EPA Region VI met with TDI on August 16 and 20, 1986, to discuss the stay request and solicit additional information on the new tehnology. At those meetings and in subsequent communications with TDI, the Agency has obtained new information on the treatment efficiency of TDI's newly developed thermal recovery process, new information on cost savings which may result from using it instead of shore disposal, and clarification of information submitted by SEDSCO during the comment period on the draft General Permit. The Regions are now reconsidering the permit prohibition on the discharge of cuttings removed from oil-based drilling fluids, but are maintaining it in effect for the present. TDI has withdrawn its Motion to Stay pending final agency action on the reconsideration.

TDI's process essentially entails exposing drill cuttings to controlled heat sufficient to incinerate and/or vaporize residual oils, then condensing the exhaust gases to recapture vaporized oils, which are then returned to the mud system. Greatly reduced in volume, the treated cuttings emerge from the process as a dry clay-like material. Although the process' efficiency is still under investigation, it is clearly superior to cuttings washers and the Regions agree it unlikely that discharging cuttings which have been treated to the level possible with TDI's new technology would constitute a "discharge of free oil." Hence, implementing that requirement through a total prohibition on such discharges may be inappropriate. At the same time, however, the Regions do not wish to allow the discharge of unmonitored or inadequately treated cuttings.

In view of both concerns, the Regions now believe the best means of regulating the discharge of drill cuttings removed from oil-based muds is through both specific and general effluent limitations. They intend to propose a modification to the General Permit which would allow the discharge of treated drill cuttings have less than a specified percentage of oil and grease by weight. Even through they met that limitation, however, the discharged cuttings would also be required to meet the General Permit's "no discharge of free oil" limitation. This would allow operators to choose between treatment technologies, including TDI's which allow discharges, or the more common disposal method of transportation to shore for disposal. The effect of allowing the discharge of treated cuttings would be the continued development of cuttings treatment technology, reduced compliance costs for the offshore oil and gas industry, and reduced disposal pressure in coastal areas.

TDI suggests that the discharge of cuttings containing 2.5% or less oil-by-weight would not cause a visible sheen and that such a figure should accordingly constitute the numerical equivalent to "no discharge of free oil." The regions do not, however, believe that there is an exact threshold percentage of oil in drill cuttings which would cause a visible sheen after discharge. There are simply too many potentially variable factors, such as the surface area, porosity, and chemical composition of the cuttings. Hence, the Regions believe it more appropriate to base the limitation on the removal efficiency of the new technology.

TDI has provided the Regions two sets of data on the concentrations of oil on cuttings after treatment with the thremal oil recovery process. This limited data base suggests that cuttings treated with TDI's thermal recovery process may consistently contain only 1 to 1.5% oil and grease by weight. The data contains apparent anomalies suggesting that process efficiency may be affected by unknown operational factors, however, and the Regions desire additional data before they propose a specific numerical limitation. Hence, Region VI proposes to issue demonstration permits to Conoco Inc. EPA also wishes to use the data generated under the proposed demonstration permit in connection with its continuing development of effluent limitation guidelines and standards for

the offshore segment of the oil and gas extraction point source category.

If issued, the demonstration permits will allow Conoco to discharge treated drill cuttings from one fixed platform and one mobile rig under test requirements developed by EPA Region VI and EPA's Industrial Technology Division. This will allow recovery of data from several drilling operations using TDI prototypes of somewhat different physical configurations. The permits will require Conoco to analyze the cuttings for oil and grease, priority organics, and toxicity, both before and after treatment. Process air emissions must also be tested and feed rates must be monitored and reported.

The fixed platform is number 55A in lease block South Pass 55. The mobile rig will be discharging in either the West Delta or Grand Isle lease areas. There are no areas of biological concern located in these areas. Except for the prohibitions on discharge of drill cuttings and trace drilling fluids adhering to them, all discharges from those rigs will be subject to the limitations of the General Permit. Under those circumstances and based on a review of the Ocean Discharge Criteria evaluation prepared for the General Permit, Region VI finds that the permitted discharges will not cause unreasonable degradation of the marine environment. See 40 CFR Part 125, Subpart M.

In addition to this **Federal Register** Notice, EPA Region VI is providing individual notice of the proposed permits to each party on its NPDES permit mailing list. Requests for hearing, comments on the proposed demonstration permits, and/or suggestions for conditions thereto will be acepted by EPA Region VI until April 30, 1987. If Region VI issues final demonstration permits, it will provide copies thereof to any party requesting them.

Authority: 33 U.S.C. 1342.

Dated: March 16, 1987.

Myron O. Knudson, P.E.,

Director, Water Management Division, EPA Region VI.

[FR Doc. 87-6990 Filed 3-30-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004067-004
Title: Oakland Terminal Agreement
Parties: City of Oakland, Stevedoring Services of America (SSA)
Synopsis: The proposed amendment would extend the term of the agreement to August 31, 1987 with possible month-to-month continuation after that time. The amendment would also provide for additional compensation to SSA for services rendered.

Agreement No.: 202-010776-015
Title: Asia North America Eastbound Rate Agreement
Parties: American President Lines, Ltd., Barber Blue Sea, Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Lines, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Showa Line, Ltd., United States Lines, Inc., Yamashita-Shinnihon Steamship Co., Ltd., Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would eliminate the right of independent action on Canadian destination cargoes to the extent the independent action reduces a rate or service item below minima reflected in the Agreement's Canadian tariffs. The parties have requested a shortened review period.

Agreement No.: 202-010776-016
Title: Asia North America Eastbound Rate Agreement
Parties: American President Lines, Ltd., Barber Blue Sea, Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Lines, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Showa Line, Ltd., United States Lines, Inc., Yamashita-Shinnihon Steamship Co., Ltd., Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would clarify the existing authority of the agreement with respect to the compensation payable to connecting carriers involved in transshipment arrangements with the agreement parties.

Agreement No.: 224-011081
Title: Charleston Terminal Agreement
Parties: South Carolina State Ports Authority (Port), Orient Overseas Container Line Inc. (OOCL)
Synopsis: The proposed agreement would permit OOCL to use 1796 container slots at the Port's Wando Terminal for an initial period of three years. The parties have requested a shortened review period.

Agreement No.: 224-011082
Title: Baltimore Terminal Agreement
Parties: Maryland Port Administration (Port), The Goodyear Tire & Rubber Company (Goodyear)
Synopsis: The proposed agreement would permit the Port to lease 38,000 square feet of space in the Pier 3 Shed at its North Locust Point Marine Terminal and 300 feet of adjacent railroad track to Goodyear for an initial five-year term.

Agreement No.: 224-011083
Title: Fednav-Canmar RoRo Coordinated Service
Parties: Canada Maritime Limited, Fednav Lakes Services, a division of Fednav (USA), Inc.
Synopsis: The proposed agreement would form a joint service between the parties in the trade between U.S. and Canadian Great Lakes and St. Lawrence River ports and Canadian East Coast ports and ports in North Europe and the United Kingdom. The agreement applies only to the carriage of commercial cargo on roll-on roll-off vessels within the scope of the agreement.

By Order of the Federal Maritime Commission.

Dated: March 26, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-7016 Filed 3-30-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First of America Bank Corp.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan and First of America Bancorporation-Illinois, Inc., Kalamazoo, Michigan, to engage *de novo* through their subsidiary, First of America Trust Company, Bannockburn, Illinois, in offering personal and institutional trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y. This activity will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, March 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6961 Filed 3-30-87; 8:45 am]

BILLING CODE 6210-01-M

First Peterborough Bank Corp. et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the applicatcn has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Peterborough Bank Corp.*, Peterborough, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Peterborough, Peterborough, New Hampshire.

2. *Hartford National Corporation*, Hartford, Connecticut; to acquire 100 percent of the voting shares of Chester Bank, Chester, Connecticut. Comments on this application must be received by April 17, 1987.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Empire State Corporation*, Buffalo, New York; to acquire 100 percent of the voting shares of Bank of Richmondville, Richmondville, New York.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *McLachlen Bancshares Corporation*, Washington, DC; to become a bank holding company by acquiring 100 percent of the voting shares of McLachlen National Bank, Washington, DC.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CBE, Inc.*, Elkhorn, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Elkhorn, Elkhorn, Wisconsin. Comments on this application must be received by April 16, 1987.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NW Bancshares, Inc.*, Chippewa Falls, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of The Northwestern Bank, Chippewa Falls, Wisconsin.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Kansas National Bancorporation, Goodland, Kansas; to acquire 100 percent of the voting shares of Peoples State Bank, Sharon Springs, Kansas. Comments on this application must be received by April 10, 1987.

Board of Governors of the Federal Reserve System, March 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6962 Filed 3-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Uniform Proficiency Testing Program; Consideration; Meeting

AGENCY: CDC, HHS.

ACTION: Notice of meeting—Consideration of a proposal for a Uniform Proficiency Testing Program for Laboratories Covered by Medicare and the Clinical Laboratory Improvement Act of 1967.

Time and Date: 9:00 a.m.–4:00 p.m.—May 4, 1987.

Place: Auditorium A, Centers for Disease Control (CDC), 1600 Clifton Road, NE, Altanta, Georgia 30333

Status: Open to the public for participation, comment, and observation, limited only by the space available.

Matters to be Discussed: The Health Care Financing Administration (HCFA) has asked CDC to develop a proficiency testing program that would be applicable to laboratories that are Medicare certified and/or licensed under the Clinical Laboratories Improvement Act (CLIA) of 1967. In response to this request, CDC has developed a proposal for a uniform proficiency testing program that includes recommendations for program content, frequency of challenge, degree of challenge, and evaluation schemes for individual laboratory performance. Prior to submission of a final proposal to HCFA, CDC is holding this meeting to solicit comments on all aspects of this proposal.

Copies of CDC's draft proposal will be available on request after April 1. Interested persons may file written statements or may make an oral statement at the meeting. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the Meeting Director. Anyone wishing to make an oral statement or file a written statement must notify the contact person by May 1, for inclusion in the meeting schedule.

Contact Person for More Information: To obtain a copy of the Uniform Proficiency Testing Proposal or for additional information concerning the meeting contact: D. Joe Boone, Ph.D., Training and Laboratory Program Office, CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, Commercial: 404/329-1967, Telephones: FTS 236-1967.

Dated: March 25, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-6963 Filed 3-30-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87N-0078]

J.D. Copanos and Sons, Inc. and Kanasco, Ltd.; Proposal To Withdraw Approval of New Drug Applications and New Animal Drug Applications for Sterile Injectable Products; Amendment

AGENCY: Food and Drug Administration

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous notice of opportunity for hearing that proposed to withdraw approval of the new drug applications (NDA's) and new animal drug applications (NADA's) for sterile injectable drug products manufactured by J.D. Copanos and Sons, Inc. and Kanasco, Ltd. (affiliated corporations hereinafter referred to collectively as Kanasco). This amendment rescinds the notice of opportunity for hearing with respect to two NDA's held by Elkins-Sinn, Inc. The notice incorrectly listed the two Elkins-Sinn NDA's as providing for sterile injectable drug products manufactured by Kanasco. Elkins-Sinn's products are not manufactured by Kanasco.

DATE: The rescission is effective March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of March 10, 1987 (52 FR 7311), FDA proposed to withdraw approval of the NDA's and NADA's for sterile injectable drug products manufactured by Kanasco. The basis for the proposal was that the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the sterile injectable drugs are inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of written notice specifying the inadequacies. The notice incorrectly listed the following NDA's as providing for sterile injectable products manufactured by Kanasco:

NDA 80-515; Cyanocobalamin; Elkins-Sinn, Inc., 2 Easterbrook Ln., P.O. Box 5483, Cherry Hill, NJ 08034.

NDA 83-165; Prednisolone acetate; Elkins-Sinn, Inc.

These products are not manufactured by Kanasco. Accordingly, the Acting Director of the Center for Drugs and Biologics hereby rescinds the March 10, 1987 notice of opportunity for hearing with respect to the above listed NDA's.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to the Acting Director of the Center for Drugs and Biologics (21 CFR 5.82).

Dated: March 25, 1987.

Gerald F. Meyer,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 87-7012 Filed 3-30-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds for Demonstration Grants for Projects of Emergency Medical Services for Children

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $4 million is available for grants under section 1910 of the Public Health Service (PHS) Act, 42 U.S.C. 300w-9, which authorizes the Department to make grants to States or accredited schools of medicine in States to support demonstration projects for the expansion and improvement of emergency medical services (EMS) for children. Up to eight awards will be made under this notice. HRSA, through this notice, invites eligible applicants to apply for these grants.

DATE: To receive consideration, applications for the EMS for Children grants must be received by the close of business June 29, 1987, by the Chief, Grants Management Branch, at the address below.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

ADDRESS: Application for grants is made on PHS form 5161-1 (approved under OMB #0348-0006). Specific grant application guidelines, application forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Waddell Avery, Chief, Grants Management Branch, Bureau of Health Care Delivery and Assistance (BHCDA), HRSA, Room 7A-08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-1440.

FOR FURTHER INFORMATION CONTACT: States or accredited medical schools wishing to inquire about the programmatic aspects of the EMS for children activity should address their inquiries, in writing, to the Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery

and Assistance, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2170.

SUPPLEMENTARY INFORMATION: Section 1910 of the PHS Act, as amended, the EMS for children statute, establishes a program of grants to States and accredited medical schools for demonstration projects for the expansion and improvement of EMS for children who need treatment for critical illnesses and injuries. The term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, The Northern Mariana Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. In light of recent developments regarding the status of the entities that previously comprised the Trust Territory of the Pacific Islands, we are viewing the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia each as a State for purposes of this grant program. The term "school of medicine" for purposes of this program is defined as having the same meaning as set forth in section 701(4) of the PHS Act (42 U.S.C. 292a(4)). "Accredited" in this context has the same meaning as set forth in section 701(5) of the PHS Act (42 U.S.C. 292a(5)).

By statute, the grant period is for one year; however, the grant may be renewed for a second year if it is determined that renewal will provide significant benefits through the collection, analysis and dissemination of information and data which will be useful to other States. Also, by statute, only one grant is to be made within a State—either to the State or an accredited medical school—in any given year. Another statutory provision limits the number of grants which may be made in any fiscal year to four (4). However, because both fiscal year 1986 and 1987 funding is available at this time, up to eight (8) grants will be made under this notice. (Fiscal year 1986 funding is still available because when Congress appropriated fiscal year 1986 funding for this program in Pub. L. 99–349, it expressly provided that the funding will remain available until September 30, 1987).

It is the intent of this grant program to stimulate the initiation or expansion of ongoing efforts in the States to reduce the problems of life threatening pediatric trauma and critical illness. The Department does not intend to award demonstration grants which would duplicate the former categorical EMS grant program funded by this agency, or which would be used simply to increase the availability of EMS funds allotted to the State under the Preventive Health Services Block grants.

Eligible applicants

Applications for funding under section 1910 will be accepted from States and accredited schools of medicine. Applicants are encouraged to seek the participation and support of other entities within the State, such as local governments and health and medical organizations in the private sector, in developing the proposed demonstration project.

Application evaluation criteria

An application will be evaluated by consideration of the following factors:

(1) The adequacy of the applicant's description of the problem of pediatric trauma and critical illness in the State. The adequacy of sections of the application devoted to the special problems of (a) handicapped children and families; and (b) minority children and families (including Native Americans).

(2) The appropriateness of project outcome objectives in relation to the specific nature of the problems identified by the applicant.

(3) The soundness (in relation to the state of the art) appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.

(4) The soundness of the plan for evaluating progress in achieving project outcome objectives.

(5) The extent of collaboration and coordination with other appropriate organizations involved in health care and public health (e.g., injury prevention activities, community support services, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

(6) The soundness of the proposal, as set forth in the application, in terms of fiscal management, effective use of personnel, and ability to complete the proposal within the one year grant period.

(7) The extent to which the applicant's work under the grant is likely to demonstrate approaches to the reduction of the consequences of the pediatric life-threatning trauma and critical illness that will be useful and broadly applicable in other communities.

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in those States for the review. Since States are allowed 60 days for this review, applicants are advised to discuss projects with, and provide copies of their applications to, State contact points as early as possible. At latest, an applicant should provide the application to the State for review at the same time it is submitted to the Grants Management Branch, BHCDA.

OMB Catalog of Federal Domestic Assistance

This program is listed at No. 13.127 in the OMB Catalog of Federal Domestic Assistance.

Dated: March 24, 1987.

David N. Sundwall,

Administrator.

[FR Doc. 87–6974 Filed 3–30–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–7122–10–1018, CA–19164]

Realty Action; Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public and private lands, CA 19164.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3 S., R. 6 E.
Sec. 24, All
T. 3 S., R. 7 E.
Sec. 20: Lots 1 & 2, SW¼SW¼
Sec. 30: Lots 5–16 inclusive, N½N½NE¼, N½NE¼NW¼, SW¼NE¼NW¼, NW¼SE¼NW¼

Containing 845.34 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands in Riverside County from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E
Sec. 9: SW¼

Containing 160 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard.

The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other state and federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

Lands being transferred out of federal ownership will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All the geothermal steam and associated geothermal resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, contact John Sullivan, BLM Indio Resource Area Office, 1900 E. Tahquitz-McCallum Way, Suite B-1, Palm Springs, California 92262-7061.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: March 20, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87-6966 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-40-M

[OR-118-07-4212-17; GP7-147]

Public Lands, Establishment of Camping Study Limit for Campgrounds and Undeveloped Public Lands, Medford District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limit for campgrounds and undeveloped public lands in the Medford District, Oregon.

SUMMARY: Persons may camp within designated campgrounds or on public lands not closed to camping within the Medford District for a total period of not more than fourteen days during any 90 day period. The 90 day period will begin the first full day the site is occupied following a previous 90-day period. The fourteen-day limit may be reached either through a number of separate visits or through a period of continuous occupation of the public lands. Under special circumstances and upon request, the authorized officer may give written permission for extensions to the fourteen-day limit.

Additionally, no person may leave personal property unattended in designated day use areas for a period of more than 24 hours or in designated campgrounds or recreation developments for a period of more than 72 hours, or elsewhere on public lands within the Medford District for a period of more than 10 days without written permission from the authorized officer.

DATE: This camping stay limit is effective May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Harold Bellisle, Grants Pass Area Manager, 3040 Biddle Road, Medford Oregon 97504. Telephone (503) 776-4325.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long term unauthorized occupancy being conducted under the guise of camping within campgrounds and on undeveloped public lands in the Medford District.

Authority for this stay limit is contained in CFR Title 43, Chapter II, Part 8360, Subparts 8364.1, 8365.1-2, and 8365.2-3.

David Jones,

District Manager.

[FR Doc. 87-6967 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-33-M

[NM-940-07-4220-11; NM 0301943]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 20.00-acre site for the Beartrap Forest Campground (formerly Beartrap Forest Camp) continue for an additional 19 years; and three sites totaling 80.00 acres for the Capilla Peak Administrative Site, Capilla Peak Forest Camp, and Red Canyon Forest Camp continue for an additional 20 years. The land would remain closed to location and entry under the mining laws.

DATE: Comments should be received by June 29, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 2923 dated January 30, 1963, be continued for a period of 19 years for the Beartrap Forest Campground; and the Capilla Peak Administrative Site, Capilla Peak Forest Camp, and Red Canyon Forest Camp continue for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest Magdalena Ranger District Beartrap Forest Campground (formerly Beartrap Forest Camp)

T. 5 S., R. 7 W.,
Sec. 12, SW¼NW¼SE¼, NW¼SW¼SE¼.

Mountainair Ranger District

Capilla Peak Administrative Site

T. 6 N., R. 5 E.,
Sec. 34, S½SW¼SE¼.

Capilla Peak Forest Camp

T. 6 N., R. 5 E.,
Sec. 34, E½SW¼SE¼.

Red Canyon Forest Camp

T. 5 N., R. 5 E.,
Sec. 33, N½NE¼NE¼.
Sec. 34, W½NW¼NE¼.

The area described aggregates 100.00 acres in Torrance and Socorro Counties.

The purpose of the withdrawal is for the protection of substantial capital improvements on the Magdalena and Mountainair Ranger Districts, Cibola National Forest. The withdrawal closed the described lands to mining but not to surface entry or mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 20, 1987.

Monte G. Jordan,

State Director Associate.

[FR Doc. 87-6968 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-FB-M

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48632-AF has been received covering the following lands:

Copper River Meridian, Alaska

T. 12 N., R. 3 W.,
Sec. 6, NW¼NE¼.

(33.71 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48632-AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1986, subject to the terms and conditions cited above.

Dated: March 18, 1987.

Sue A. Faught,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 87-7047 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-JA-M

[MT-920-07-4111-13; MTM 62845]

Proposed Reinstatement of Terminated Oil and Gas Lease; Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 62845, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease had been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: March 19, 1987.

Karen L. Skauge,

Chief, Leasing Unit.

[FR Doc. 87-7003 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted DOCD describing the activities it proposes to conduct on Lease OCS 0462, Block 135, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on March 23, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmond Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-6969 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management services.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7835, Block 31, Chandeleur Area, offshore Louisiana. Propsed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on March 20, 1987. Comments

must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minearls Management Service.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 23, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–6970 Filed 3–30–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5669, Block 18, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 20, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 23, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–6971 Filed 3–30–87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

[FES 87–13]

Availability of Final Environmental Impact Statement; Upper Delaware Scenic and Recreational River, NY and PA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of final environmental impact statement for the proposed river management plan, Upper Delaware Scenic and Recreational River.

DATES: This notice announces the availability of the final environmental impact statement for the proposed river management plan for the Upper Delaware Scenic and Recreational River. No action will be taken on the alternatives contained in this statement for 30 days following the notice of availability filed with the Environmental Protection Agency.

ADDRESS: Copies of the final environmental impact statement and proposed river management plan are available from the National Park Service, Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, PA 19106. Copies may also be obtained at Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764–0159; and Conference of Upper Delaware Townships, P.O. Box 41, Fosterdale, NY 12735.

Bruce Blanchard, Director,

Environmental Project Review.

March 26, 1987.

[FR Doc. 87–7030 Filed 3–30–87; 8:45 am]

BILLING CODE 4310-70-M

Statue of Liberty-Ellis Island Centennial Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Statue of Liberty-Ellis Island Centennial Commission meeting. The purpose of this meeting is to discuss possible upcoming reports on the development of the northern and southern portions of Ellis Island and a report from the Statue of Liberty-Ellis Island Foundation. Other additional business which may properly be brought before the Commission may also be considered at this meeting.

TIME AND DATE: 10:30 am to 3:00 pm, Friday, April 24, 1987.

Place: Secretary's Conference Room (Room 5160), Department of the Interior,

18 and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tracey Harbaugh, Staff Assistant, Office of the Assistant Secretary for Fish and Wildlife and Parks, Room #3152, 18 And C Streets, NW., Washington DC 20240, (202) 343–8928.

Dated: March 24, 1987.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–7031 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places, Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 21, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 15, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Diego County

San Diego, *Sweet, A. H., Residence and Adjacent Small House,* 435 W. Spruce St. and 3141 Curlew St.

Santa Cruz County

Capitola, *Old Riverview Historic District,* Blue Gum Ave., Capitola Ave., Riverview Ave., Riverview Dr., and Wharf Rd.

Capitola, *Six Sisters-Lawn Way Historic District,* Lawnway, Capitola Ave., San Jose Ave., and Esplanade

DISTRICT OF COLUMBIA

Washington

Cleveland Park Historic District, Roughly between Wisconsin Ave. on the west, Connecticut Ave. on the east, Tilden St. to the north, and Klingle Rd. to the south.

Kalorama Triangle Historic District, Roughly bounded by Connecticut Ave., Columbia Rd., and Calvert St.

FLORIDA

Brevard County

Windover Archeological Site (8BR246)

KENTUCKY

Pike County

Pikeville, *Chesapeake and Ohio Passenger Depot,* (Pikeville MRA) Hellier Ave.

MARYLAND

Baltimore (Independent City)

Cathedral Hill Historic District, Charles, Cathedral, Hamilton, Saratoga and St. Paul Sts.

MINNESOTA

Kandiyohi County

Lake Lillian vicinity, *Bosch John, Farmstead,* CR 4

Willmar vicinity, *District School No. 55,* CR 3 and US 71

MISSISSIPPI

Adams County

Natchez vicinity, *Hillside,* Hutchins Landing Rd.

MONTANA

Big Horn County

Crow Agency, *Custer Battlefield Historic District (Custer Battlefield National Monument MRA),* East bank of the Little Bighorn River

Crow Agency, *Reno-Benteen Battlefield (Custer Battlefield National Monument MRA),* 5 mi. S of Custer Battlefield

VIRGINIA

Buckingham County

New Canton vicinity, *Mount Ida,* VA 610

Richmond (Independent City)

Trinity Methodist Church, 2000 E. Broad St.

Suffolk (Independent City)

Suffolk Historic District, Roughly Bounded by RR tracks, Hill St., Centeral Ave., Holladay St., Washington St., N. Saratoga St. and Pine St.

[FR Doc. 87–6973 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, IRM/PE, Room 1109, SA–14, Washington, DC 20523.

Date Submitted: March 25, 1986.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0520.

Type of Submission: Renewal.

Title: Information Collection Elements in the A.I.D. Acquisition Regulations (AIDAR).

Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons whether within or without the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements placed on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR Part 7. These are all A.I.D. unique procurement requirements which have not otherwise been submitted to OMB for approval. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information during the post-award period are based on the need to administer public funds prudently.

Respondents will have a submission burden of three responses and an estimated annual recordkeeping burden of 12 hours per recordkeeper

Reviewer: Francine Picoult (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: March 23, 1987.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 87–6964 Filed 3–30–87; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–17,139]

Union Switch and Signal Division American Standard Inc.; Swissvale, PA; Public Hearing

Pursuant to a court order from the U.S. Court of International Trade (USCIT) in *United Electrical Radio & Machine Workers of America* v. *Secretary of Labor* (USCIT 86–11–01409) on March 10, 1987, a public hearing is scheduled for 7:00 pm on April 16, 1987 at the Swissvale Municipal Building in Swissvale, Pennsylvania. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish additional testimony and evidence of a relevant

and material nature bearing upon the investigation regarding petition TA-W-17,139 filed on behalf of workers and former workers at Union Switch and Signal Division, American Standard Incorporated, Swissvale, Pennsylvania.

Such individuals who desire to furnish additional testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Tuesday, April 14, 1987. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC, at (202) 376-2646. The Director's Office is in Room 6434, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of March, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-7087 Filed 3-30-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-50-C]

Meshach Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Meshach Coal Company, HC 81 Box 1532, Hinkle, Kentucky 40953 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14028) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish witten comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 30, 1987. Copies of the petition are available for inspection at that address.

Dated: March 24, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-7032 Filed 3-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-4-M]

Montana Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Montana Resources, Inc., 600 Shields Avenue, Butte, Montana 59701 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Continental Mine (I.D. No. 24-00338) located in Silver Bow County, Montana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

2. As an alternate method, petitioner seeks a modification of the standard that will allow each agitator and drive shaft within the floatation process of the Concentrator, not to be guarded. In further support of this request, petitioner states that:

(a) The agitator and drive assembly are located more than six feet above the floor and are offset slightly more than one foot on either side from the walkway. Since pinch points are inaccessible, accidental exposure is highly unlikely;

(b) All mechanical and electrical work on flotation machines calls for the use of a lock-put procedure. By locking out equipment at the main disconnect, adequate protection is provided. When employees perform such work, the entire row of agitators is shut down; thus, adjacent cells do not present a hazard;

(c) The "Three grove poly V-Belts", which rotate the agitator, are made of three strands bounded by one backing. The belts rarely break, but if they do, broken belts drop to the side presenting no hazard to employees;

(d) The entire flotation division is staffed by two persons per shift. Each division is operated and monitored by a Control Room Supervisor. Because of the remote control capabilities, the work required on the flotation floor is reduced and potential exposures are therefore minimal; and

(e) There are no congested areas within the flotation division and spare parts are kept free of all aisleways. The entire division is adequately lighted.

3. Petitioner also states that additional guards could obscure operators vision of the process and may congest some of the work areas, especially during maintenance and repairs.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 30, 1987. Copies of the petition are available for inspection at that address.

Dated: March 24, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-7033 Filed 3-30-87; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Fiduciary Liabilities of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:30 a.m., Tuesday, April 28, 1987, in Room N-3437C, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This eight-member work group was formed by the Advisory Council to study various ERISA issues relating to fiduciary liabilities.

The purpose of the April 28 meeting is to determine problems pension funds are having in obtaining fiduciary liability insurance coverage, as well as problems insurance companies have in providing such insurance. The work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before April 20, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 22, 1987.

Signed at Washington, DC, this 26th day of March, 1987.

Dennis M. Kass,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 87-6996 Filed 3-30-87; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-335]

Florida Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to the Florida Power & Light Company (the licensee), for the St. Lucie Plant, Unit No. 1, located at the licensee's site in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action

The requested exemption is related to Section III of Appendix J to 10 CFR Part 50. Section III contains containment leakage testing requirements. Specifically, the licensee has requested an exemption from paragraph III.D.2(b)(ii) which states "air locks opened during periods when containment integrity is not required by the plant's Technical Specification shall be tested at the end of such periods at not less than Pa."

The proposed exemption is responsive to the licensee's letter dated October 10, 1986, as supplemented by letter dated January 9, 1987, requesting the exemption.

The Need for the Proposed Action

The existing air lock doors are so designed that a full pressure test at the calculated peak containment internal pressure (Pa) of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strongbacks are extremely difficult to install and the outer door must be opened to remove the strongbacks. As a result, approximately 14 hours are required to complete a full pressure test of an air lock. Therefore, the licensee proposes an alternative test to be conducted during those periods when containment vessel integrity is not required by the Plant Technical Specifications and prior to entering Mode 4. The alternative test consists of testing the seals of the inner and outer doors by pressurizing the area between the seals and verifying an acceptable leakage rate. If, however, maintenance has been performed on the air lock since the last successful test performed pursuant to paragraph III.D.2(b)(i), an overall air lock test will be performed. The licensee contends that this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operation.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed exemption from Appendix J to 10 CFR Part 50 indicates that the granting of the exemption will not impact containment integrity for the following reasons. If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling.

Therefore, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there is no significant radiological environmental impact associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (for the construction permit and operating license) for the St. Lucie Plant, Unit No. 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter requesting the exemption dated October 10, 1986, and the supplemental letter dated January 9, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida.

Dated at Bethesda, Maryland, this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 87-7055 Filed 3-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp. et al. and Crystal River Unit No. 3 Nuclear Generating Plant; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (Crystal River Unit 3), located in Citrus County, Florida.

Identification of Proposed Action

The amendment would extend the expiration date of the operating license for Crystal River Unit 3 from September 25, 2008 to December 3, 2016. The license amendment is responsive to the licensee's application dated February 17, 1986, as supplemented on November 19 and 25, 1986, and February 17, 1987. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-72, Florida Power Corporation, et al., Crystal River Unit No. 3 Nuclear Generating Plant, Docket No. 50-302", dated March 26, 1987.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for Crystal River Unit 3. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to the Proposed Crystal River Unit 3" (FES), May 1973, and more recent NRC policy.

Radiological Impacts

Based on current and projected populations, the Commission's staff concludes that the Low Population Zone and the nearest population center distances will likely be unchanged from those used for licensing the unit. Therefore, the conclusion reached in the staff's Safety Evaluation in 1974 that Crystal River Unit 3 meets the requirements of 10 CFR Part 100 remains unchanged. The staff further concluded that overall conclusions of the FES concerning radiological consequences following accidents would not change.

Principal factors associated with an additional period of operation which could potentially change the probability or consequences of an accident were examined, and the staff has determined that the proposed extension would not cause a significant increase in the radiological consequences or in public risk from reactor accidents, and would not change any conclusions reached by the Commission in the FES.

With regard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate. Estimated doses from effluent releases have been well below projected values and dose design objectives, and increases due to extended plant operation will not be significant. Occupational exposures are expected to remain about as estimated in the FES. Accordingly, the Commission's staff has concluded that radiological impacts on man, both onsite and offsite, due to extended plant operations will not be signficant and that our previous cost-benefit conclusions remain valid.

With regard to transportation of fuel and waste, estimated doses to individuals per reactor year will not increase beyond Table S-4 of 10 CFR 51.52, and environmental impacts will not be signficantly different from those previously assessed in the FES.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration date of the Crystal River Unit 3 Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the Commission's staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment dated February 17, 1986, as supplemented on November 19 and November 25, 1986, and February 17, 1987, (2) the FES issued May 1973, and (3) the Environmental Assessment dated March 26, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, DC 2055 and at the Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629.

Dated at Bethesda, Maryland, this 26th day of March, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B.

[FR Doc. 87-7056 Filed 3-30-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Hearings on Restoration of the Application of Column 1 Rates of Duty of the Tariff Schedules of the United States to Products of Poland

SUMMARY: This publication gives notice that the Trade Policy Staff Committee (TPSC) will conduct public hearings on the application of column 1 Rates of Duty of the Tariff Schedules of the United States to the products of Poland.

1. Public Hearings

In conformity with the Trade Expansion Act of 1962, as amended and the Trade Act of 1974, including section 125 thereof, the Trade Policy Staff Committee (TPSC) has scheduled a hearing on April 28, 1987 to provide an opportunity for public comments on Proclamation 5610, which restores the application of column 1 rates of duty of the Tariff Schedules of the United States to the products of Poland.

2. Requests to Participate in the Public Hearings

Hearings will be held on Tuesday, April 28, 1987, beginning at 10:00 a.m. in Room 403, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (to be continued on April 29 if necessary). Parties wishing to testify orally at the hearing must provide written notification of their intention by April 20, 1987 to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trtade Representative, 600 17th Street, NW., Room 521, Washington, DC 20506. In addition, parties must provide the following information.

(1) Their names, addresses and telephone numbers; and

(2) A brief summary of their presentation, including the product(s), with TSUS numbers, to be discussed.

Those parties presenting oral testimony must submit a complete written statement in 20 copies by noon, Thursday, April 23. Remarks at the hearing should be limited to no more than a 10 minute summary of the written statement, to allow time for possible questions from the Chairman and the interagency panel.

Persons not wishing to participate in the hearings may submit a written statement in 20 copies by April 29, 1987 to Carolyn Frank at the address noted above. Any business confidential material must be accompanied by a nonconfidential summary thereof.

Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the Committee's rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information and other procedures related to TPSC hearings.

3. Background

On February 19, 1987 the President signed Proclamation No. 5610 (52 FR 5425 February 23, 1987), revoking Proclamation No. 4991 which had suspended the application of the rates of duty provided in Column 1 of the Tariff Schedules of the United States (TSUS) to the products of Poland. The President's Proclamation of February 19, 1987 followed from his determination that the Polish Government had taken steps that led him to believe that Poland should be given a renewed opportunity to address its trade obligations with the benefit of most-favored-nation tariff treatment. The President determined that the national interest required expeditious action in this case. The Proclamation took effect on February 23, 1987.

For further information, contact Carol Thompson, Office of Europe and the Mediterranean, Office of the United States Trade Representative, 600 17th Street NW., Room 317, Washington DC 20506, telephone: 395–3211.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87–7071 Filed 3–30–87; 8:45 am]

BILLING CODE 3190–01–M

U.S.-Japan Semiconductor Arrangement; Request for Public Comments on Possible U.S. Actions in Response to Acts by the Government of Japan Apparently Inconsistent With the Arrangement

SUMMARY: The section 301 Committee will conduct a public hearing on April 13, 1987, on possible U.S. actions in response to the apparent failure by the Government of Japan to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement.

FOR FURTHER INFORMATION CONTRACT: Jim Gradoville, (202) 395–3475 (for technical and policy issues); Chris Parlin (202) 395–3432 (for legal issues).

SUPPLEMENTARY INFORMATION: On September 2, 1986, the governments of Japan and the United States of America signed the Arrangement concerning Trade in Semiconductor Products ("U.S.-Japan Semiconductor Arrangement"). In the Arrangement, the Government of Japan Joined the Government of the United States in declaring its desire to enhance free trade in semiconductors on the basis of market principles and the competitive positions of the semiconductor industries in the two countries. The Government of Japan committed: (1) To impress upon Japanese semiconductor producers and users the need to aggressively take advantage of increased market access opportunities in Japan for foreign-based semiconductor firms; and (2) to provide further support for expanded sales of foreign-produced semiconductors in Japan through establishment of a sales assistance organization and promotion of stable long-term relationships between Japanese purchasers and foreign-based semiconductor producers. Finally, both Governments agreed that the expected improvement in access by foreign-based semiconductor producers would be gradual and steady over the period of the Arrangement.

Although the Government of Japan has taken a few steps toward satisfying these obligations, they have been inadequate; there have not been concerted efforts to fulfill the Arrangement's obligations to increase market access opportunities in the Japanese market for foreign-based semiconductor producers.

In the Arrangement the Government of Japan also committed: (1) To monitor costs and export prices on semiconductor products exported by Japanese semiconductor firms from Japan in order to prevent "dumping" (circumvention of antidumping measures taken in the United States); and (2) to encourage Japanese simiconductor producers to conform to this principle.

Again, the Government of Japan has taken a few steps toward satisfying these obligations, but they have been inadequate; there have not been concerted efforts to fulfill the Arrangement's obligations.

In response to the apparent failure by the Government of Japan to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement, the United States is considering increasing customs duties on products imported from Japan having a value comparable to the effect on United States commerce of Japan's failure to fullfill its obligations under the Arrangement.

Under section 301 of the act, the President is authorized to take all appropriate and feasible action within his power to enforce U.S. rights under a trade agreement or to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that denies U.S. benefits under a trade agreement or is unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce. Section 301(b) specifically authorizes the President, *inter alia*, to suspend or withdraw the benefit of trade agreement concessions and impose duties or other import restrictions on the products or services of a foreign country for such time as he deems appropriate. Measures under section 301 may be taken on a discriminatory or nondiscriminatory basis at the discretion of the President.

Public Hearings

The Section 301 Committee will hold a hearing at 10:00 a.m. on Monday, April

13, 1987, regarding products of Japan that may be subject to increased U.S. customs duties for the reasons explained above. The Executive Branch will consider public comments in recommending any action to the President under section 301. In particular, the section 301 Committee seeks interested persons' assessment of: (1) The appropriateness of the products being considered for possible retaliation; (2) the levels at which U.S. customs duties should be set; and (3) the degree to which increased duties might have an adverse impact on U.S. consumers of the products concerned.

The hearing will be held in Room 403, Office of the U.S. Trade representative, 600 17th Street, NW., Washington, DC 20506. Interested persons wishing to testify orally at the hearing must provide written notice of their intention by 12:00 noon, Wednesday, April 8, 1987, to Carolyn Frank, Office of the U.S. Trade Representative, Room 521, 600 17th Street, NW., Washington, DC 20506. In addition, they must provide the following information:

(1) Their names, addresses and telephone numbers; and

(2) A summary of their presentation, including the products, with Tariff schedules of the United States (TSUS) item numbers, to be discussed.

Those persons presenting oral testimony must submit as complete written statement in 20 copies by 12:00 noon, Friday, April 10 to Carolyn Frank at the above address. Remarks at the hearing should be limited to no more than a 10-minute summary of the written statement, to allow time for possible questions from the Section 301 Committe.

Persons not wishing to participate in the hearing must submit a written statement in 20 copies by noon, Monday, April 13, 1987, to Carolyn Frank at the above address.

All written comments should be filed in accordance with 15 CFR 2006.8.

Proposed U.S. Actions

The Administration has calculated that Japan's apparent failure to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement effects sales by U.S.-based semiconductor firms valued at approximately $300 million. Therefore, the Administration is considering imposing increased customs duties, to a level of 100 percent *ad valorem*, on the products listed in the Annex to this notice which are imported from Japan so as to result in a comparable reduction in such imports. The Administration further is considering making these increases effective as of the date this notice is published.

Alan F. Holmer,

General Counsel.

March 27, 1987.

Annex

Articles, the product of Japan, classified in the following provisions of the Tariff Schedules of the United States (TSUS) arae being considered for increased duties:

TSUS or TSUSA [1] item No.	Article
	[The bracketed language in this list is included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Pumps for liquids, whether or not fitted with measuring devices; liquid elevators of bucket, chain, screw, band, and similar types; all the foregoing whether operated by hand or by any kind of power unit, and parts thereof:
	[Fuel injection pumps for compression-ignition engines, and parts thereof]
	[Stock pumps, and parts thereof, imported for use with machines for making cellulosic pulp, paper or paperboard]
660.97	Other
	Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity of air, and parts thereof:
	Window or wall-type air-conditioners:
661.2003	Under 10,000 BTU per hour
661.2006	10,000 to 16,999 BTU per hour
661.2009	17,000 BTU per hour and over
661.35	Refrigerators and refrigerating equipment, whether or not electric, and parts thereof
	Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism:
	Accounting, computing, and other data-processing machines
676.15 pt.	Having a calculating mechanism accommodating words of 16 bit to 63 bit in length
	Office machines not specially provided for:
	Data-processing machines:
	Display units:
	[With monochrome CRT; with color CRT]
676.3046	Other
	Disc drive units:
676.3055	Hard magnetic disc drives
	Machines not specially provided for, and parts thereof:
	Combination machines containing tape players:
	Radio-tape player combinations:
	[Designed exclusively for motor-vehicle installation]
	Other:
	[Not capable of battery operation]
	Other:
	[Without speakers other than headphones, earphones and headsets]
678.5061	Other
	Phonograph-tape player combinations and radio-phonograph-tape player combinations:
	[Radio-phonograph-tape player combinations]
	[Cartridge type]
678.5066	Other

TSUS or TSUSA [1] item No.	Article
	Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof:
	Motors:
	Of under 1/40 horsepower:
682.20	Synchronous, valued not over $4 each
682.25	Other
683.20	Hand-directed or -controlled tools with self-contained electric motor, and parts thereof
684.80	Communications satellites (however provided for in part 5 of schedule 6 of the TSUS) and parts thereof
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:
	Television apparatus, and parts thereof:
	Television receivers and parts thereof:
	Having a picture tube:
	Complete television receivers:
684.9230–684.9245	Monochrome receivers containing in a single housing apparatus for receiving and displaying from off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing
	Color receivers containing in a single housing apparatus for receiving and displaying off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing, with a video display diagonal of:
684.9246	8 inches and under
684.9248	9 and 10 inches
684.9250	11 and 12 inches
684.9252	13 inches
684.9258	18 and 19 inches
	Electrical measuring, checking, analyzing, or automatically-controlling instruments and apparatus, and parts thereof:
	[Optical instruments or apparatus, and parts thereof]
	Other:
	[Ships' logs, and depth-sounding instruments and apparatus, and parts thereof]
	[Instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or similar radiations, and parts thereof]
	[Automatic flight control instruments and apparatus designed for use in aircraft, and parts thereof]
	Other:
	[Surveying, (including photogrammetrical surveying), hydrographic, navigational, meteorological, hydrological, and geophysical instruments and parts thereof]
	[Balances of a sensitivity of 5 centigrams or better, with or without their weights, and parts thereof]
	[Machines and appliances for determining the strength of articles or materials under compression, tension, torsion, or shearing stress, and parts thereof]
	[Hydrometers and similar floating instruments; thermometers, pyrometers, barometers, hygrometers, and psychrometers, whether or not recording instruments; any combination of the foregoing instruments; and parts thereof]
	[Pressure guages, thermostats, level guages, flow meters, heat meters, automatic ovendraught regulators, and other instruments and apparatus for measuring, checking, or automatically controlling the flow, depth pressure or other variables of liquids or gases, or for automatically controlling temperature, all the foregoing and parts thereof, not specially provided for]
	[Polarimeters, refractometers, spectrometers, gas analysis apparatus and other instruments or apparatus for physical or chemical analysis; viscometers, porosimeters, expansion meters and other instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension, or similar properties; photometers (except photographic light meters), calorimeters, and other instruments or apparatus for measuring or checking quantities or heat, light, or sound; all the foregoing, and parts thereof]
712.4971	Instruments and apparatus to measure or check electrical quantities, and parts thereof
712.4975	Other
	Photographic film, sensitized by not exposed:
723.15 pt.	Other than motion-picture film:
	X-ray film
	Microfilm and microfiche
	Graphic arts film (for lithography, photoengraving, rotoengraving, and silk-screen printing)
	Magnetic recording media not having any material recorded thereon:
	[For audio recording; for video or video and audio recording]
	Other:
724.4565	Tape suitable for use with computers

[1] Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

[FR Doc. 87-7178 Filed 3-30-87; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15636; 812-6569]

Counsellors Tandem Securities Fund, Inc. and Warburg, Pincus Counsellors, Inc.; Application for Order Declaring Richard Cooper To Be a Disinterested Director

March 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Counsellors Tandem Securities Fund, Inc. (the "Fund") and Warburg, Pincus Counsellors, Inc. (the "Advisor").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 2(a)(19).

Summary of Application: Applicants seek an order declaring that Richard Cooper ("Mr. Cooper") shall not, solely by reason of his status as an outside director of Phoenix Mutual Life Insurance Company ("Phoenix Mutual") be deemed to be an "interested person," as defined by section 2(a)(19) of the 1940 Act, of the Fund, or of the Advisor, or of any principal undewriter of the Fund, or of any other investment company for which the Adviser acts or may act as investment adviser or underwriter ("Other Sponsored Funds") on whose Board of Directors Mr. Cooper may serve.

Filing Date: The application was filed on December 19, 1986, and amended on March 5, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secrtary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 466 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Fund, a Maryland corporation, is registered as a closed-end, diversified, management investment company under the 1940 Act. The Fund's investment objectives are long-term capital appreciation consistent with the preservation of capital, and stability and dependability of income, which it attempts to achieve by investing primarily in common and preferred stocks of utility companies.

2. The Fund's Board of Directors currently consistes of six individuals, three of which are not "interested persons" of the Fund ("Disinterested Directors"). One of the Fund's Disinterested Directors serves as such in reliance upon Rule 2a19–1, which provides an exemption from the definition of interested person contained in section 2(a)(19) for affiliated persons of registered brokers or dealers. Mr. Cooper has constented to serve as the Fund's fourth Disinterested Director upon receipt of the exemptive order sought by this application. Mr. Cooper may also, but currently does not, serve as a Disinterested Director of Other Sponsored Funds.

3. Mr. Cooper is a director, but not an officer, of Phoenix Mutual. Phoenix Mutual has one indirect wholly-owned subsidiary that is a special purpose broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act")—Phoenix Equity Planning Corp. ("Broker-Dealer"). The Broker-Dealer's activities are limited to the sale of shares in investment companies (as defined in the 1940 Act) and limited partnerships, and unsolicited brokerage transactions, on an agency basis, in securities other than products under the 1940 Act. The Broker-Dealer also owns 4.3% of Advest, Inc., which is also a registered broker-dealer.

4. By virtue of his status as a director of Phoenix Mutual, Mr. Cooper is an affiliated person (as defined by section 2(a)(3) of the 1940 Act) of Phoenix Mutual, which by virtue of controlling five percent or more of the outstanding voting securities of the Broker-Dealer, is an affiliated person of the Broker-Dealer. Therefore, Mr. Cooper is an affiliated person of an affiliated person of the Broker-Dealer and, thus, he might be deemed to be an interested person of the Fund, the Adviser, or the Fund's principal underwriter within the meaning of sections 2(a)(19)(A)(v) and 2(a)(19)(B)(v) of the 1940 Act.

5. Without admitting that Mr. Cooper is an interested person of the Fund, the Adviser, or any principal underwriter of the Fund by virtue of being an affiliated person of an affiliated person of the Broker-Dealer, the Applicants have filed an application to eliminate the risk of that conclusion by seeking an order declaring that Mr. Cooper shall not, solely by reason of such indirect connection with the Broker-Dealer, be deemed to be such an interested person of the Fund, the Adviser, any principal underwriter of the Fund, or any Other Sponsored Fund on whose Board of Directors Mr. Cooper may serve. It is not possible for the Fund to avail itself of Rule 2a19–1 with respect to Mr. Cooper because it has already done so with respect to one of its three existing Disinterested Directors. The Fund cannot have four Disinterested Directors, two of whom would be "Disinterested" by virtue of Rule 2a19–1, because the rule provides that no more than a minority of the Fund's Disinterested Directors may be affiliated persons of registered brokers or dealers.

6. Applicants submit that the order requested herein is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Moreover, the technical provisions of the 1940 Act and the rules thereunder ought not outweigh the benefit the Applicants expect from Mr. Cooper's counsel and experience. In support of the requested order, Applicants state that the Fund would greatly benefit from Mr. Cooper's strong financial expertise. For the past six years, Mr. Cooper has been a Maurits C. Boas Professor of International Economics at Harvard University. From 1977 to 1981, he served as a senior official in the U.S. government under the Secretary of State. From 1966 to 1977, he was a Professor of Economics and Provost at Yale University. Mr. Cooper currently serves as a director of two public interest, non-profit organizations: Institute for International Economics in Washington, DC and Center of Economic Policy Studies in Brussels, Belgium.

7. In addition, for 1985, the net income of the Broker-Dealer represented less than one percent of Phoenix Mutual's consolidated net income. The brokerage activity conducted through the Broker-Dealer constitutes a small part of Mr. Cooper's attention as a director of Phoenix Mutual. Further, Mr. Cooper plays an insignificant role in the Broker-Dealer's daily operations. Mr. Cooper is not a director or officer of any direct or indirect Phoenix Mutual subsidiary and does not own stock in Phoenix Mutual, a mutual company, or any of the corporate subsidiaries of Phoenix Mutual.

8. Furthermore, the Broker-Dealer was not a principal underwriter of the Fund or any other investment company advised by the adviser, and it has not executed portfolio transactions for or engaged in principal transactions with the Fund, the Adviser (including accounts over which the Adviser has brokerage placement discretion), or any investment company advised by the Adviser.

9. Also, Mr. Cooper's position as director of the Fund, Other Sponsored Funds and Phoenix Mutual would not present the potential for conflict of interest against which the provisions of the 1940 Act relating to interested persons were designed to guard. Applicants represent that they will not carry on any business with the Broker-Dealer, whether it involves the execution of transactions or the sales of shares of the Fund. Applicants also represent that the Fund's Board of Directors has determined that the Fund and its shareholders will not be adversely affected if the Fund does not engage in any business with the Broker-Dealer.

10. Finally, the Applicants believe that Mr. Cooper is well qualified to be and would be, in fact, an independent director and that his relationship with the Fund, Other Sponsored Funds and the Adviser would in no way be altered by his affiliation with Phoenix Mutual.

Applicants' Condition

If the requested order is granted, the Applicants agree to the following condition:

1. The Applicants undertake to comply with all provisions of Rule 2a19–1 of the 1940 Act with respect to Mr. Cooper other than the requirement of subsection (a)(3) thereunder, that not more than a minority of the Fund's Disinterested Directors be perosns who are brokers, dealers, or affiliates of a broker or dealer.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–7050 Filed 3–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15635; File No. 812–6507]

E.F. Hutton Life Insurance Co. Variable Life Program; Separate Account et al.; Application for Exemption

March 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Variable Life Program Separate Account of E.F. Hutton Life Insurance Company ("VLP Separate Account") and E.F. Hutton Life Insurance Company ("Hutton Life").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 9(a), 13(a), 15(a), 15(b), 22(c), 26(a), 27(c)(1), and 27(c)(2), Rule 22c–1, and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(15), (c)(1), and (c)(4) of Rules 6e–2.

Summary of Application: Applicants seek an order to permit the offering of a single premium variable life insurance policy containing provisions for a deferred sales load, charges against the assets of the separate account for the cost of a minimum death benefit guarantee, state and local premium tax as well as the cost of insurance based on the 1980 CSO Table, allocations of the premium to the fixed account as well as the variable account of the separate account, the separate account to hold shares of the Fund under an open account arrangement without a formal trustee, and the separate account to purchase such securities from a fund offering its securities to affiliated or unaffiliated life insurers offering variable annuity contracts or scheduled or flexible premium variable life insurance contracts.

Filing Dates: The application was filed on October 20, 1986, and amended on February 6, 1987 and March 11, 1987.

Hearing of Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicant, c/o Allan S. Mostoff, Esq., 1730 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Jeffrey M. Ulness at (202) 272–3027 or Special Counsel, Lewis B. Reich at (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Hutton Life is a stock life insurance company organized under the laws of the State of California and was authorized to conduct business as a life insurance company on January 18, 1963. VLP Separate Account is a separate investment account of Hutton Life used only to support the variable death benefits and account values of variable life insurance policies. It was established by a resolution of the Board of Directors of Hutton Life under California Law adopted on March 15, 1984. VLP Separate Account registered with the SEC as a unit investment trust and a registration statement on Form S–6 has been filed with the SEC.

2. The VLP Separate Account is divided into subaccounts called "Variable Accounts." Each Variable Account will invest in shares of a designated Series of the Hutton VLP Fund (the "Fund") which is a diversified, open-end management investment company. The Fund registered with the SEC as an open-end management investment company and filed a registration statement on Form N–1A. The Fund is a series-type mutual fund that contains five series, each of which will pursue different investment objectives and policies.

3. E.F. Hutton and Company Inc. ("E.F. Hutton") will serve as Investment Adviser to each Series of the Fund. E.F. Hutton is a wholly-owned subsidiary of The E.F. Hutton Group Inc. Pursuant to a Distribution Agreement between Hutton

Life and E.F. Hutton, E.F. Hutton will act as Distributor of the Policies. E.F. Hutton will distribute the Policies through salepersons who are licensed to sell securities and insurance products. The offering of the Policies will be continuous.

4. Hutton Life intends to issue the Hutton Variable Life Program—a single premium variable life insurance policy (the "Policy" or "Policies"). The Policy is designed to provide lifetime insurance protection on an insured in return for a single premium payment. The minimum single premium to purchase a policy will be $10,000. The maximum premium which will be routinely accepted is $500,000, although larger premiums may be accepted on a case-by-case basis subject to approval by Hutton Life. The single premium may be allocated at the policyholder's discretion to one or more of the Variable Accounts of the Separate Account or to the Fixed Account of Hutton Life.

5. The death benefit under a Policy will be the greater of a Policy's Minimum Guaranteed Death Benefit or the account value times the applicable Death Benefit Multiplier on the preceding monthly processing day. Whether the death benefit will be higher than the Minimum Guaranteed Death Benefit will depend in part upon the investment performance of the variable accounts.

6. The total account value will be the amount that a Policy provides for investment at any time. The cash value will equal the account value less any unrecovered deferred load, which includes several charges and is collected in equal monthly installments in policy years two through ten. The number of voting rights held by a policyowner will be determined on the basis of that policyowner's account value, not cash value.

7. A Policy's account value in the Separate Account will vary to a degree that depends upon several factors, including investment performance of the Variable Accounts to which account value has been allocated, the amount of any outstanding policy loan, and the charges assessed in connection with a Policy. There will be no guaranteed minimum account value and the policyowner will bear the entire investment risk relating to the investment performance of the Variable Accounts.

8. A policyowner will be permitted to allocate all or a portion of his or her account value to the Fixed Account. Account values allocated to the Fixed Account will be combined with all general account assets of Hutton Life and investment in assets chosen by Hutton Life and allowed by applicable law.

9. A policyowner will be permitted to borrow money from Hutton Life using a Policy as the only security for the loan. A loan may be taken any time a Policy is in force but not prior to the end of the "free look" period. The owner may repay all or part of the loan at any time while the policy is in force.

10. Provided that there is no outstanding policy loan, Hutton Life will guarantee that the Policy will stay in force until the earliest of: (i) The insured's 100th birthday; (ii) full cash surrender of the Policy; or (iii) death of the insured. The policy will not be cancelled during the guarantee period unless the policy loan plus deductions and charges for the policy month exceed the policy's cash value. On the monthly processing date after which there is no remaining net cash value in the Policy, Hutton Life may convert the Policy to a paid-up term policy to age 100.

11. A policyowner will be permitted to fully surrender a Policy at any time during the life of the insured. In addition, a policyowner will be permitted to partially surrender a Policy at any time after the first policy year during the life of the insured. In the event of a partial surrender, the account value will be reduced by the amount of the partial surrender plus a partial surrender charge equal to a pro rata portion of the unrecovered deferred loading.

12. Certain charges called the "deferred load" will be assessed in connection with issuance of the Policy and deducted from account value in policy years two through ten. These charges, which will be based on the amount of the single premium and will consist of: sales load, administrative charge, state and local premium tax charge, and minimum guaranteed death benefit charge. A charge for the cost of life insurance will be deducted from the account value on the policy date and on each monthly processing day thereafter.

13. Other charges from variable accounts will consist of a policy maintenance charge, mortality and expense risk charge, charges for income taxes, and other charges.

14. Applicants request exemption from paragraph (c)(1) of Rule 6e–2 to the extent necessary to permit, in connection with the Policies, the allocation of single premiums and the transfer of account value to the Fixed Account of Hutton Life. The Policy provides for allocation of the premium to the Fixed Account as well as the Variable Accounts of the Separate Account. Amount allocated to the Fixed Account will be combined with all assets in the general account of Hutton Life. The account value held in a Variable Account may be transferred to the Fixed Account and under certain conditions, vice versa. The charges against the Fixed Account and the Variable Account will be the same, except that the mortality and expense risk charge and the Variable Account operating expenses are applicable only against the Variable Accounts.

15. Appilcants state that Rule 6e–2(b)(13)(iii) provides a limited exemption from the custodianship requirements under sections 26(a)(1), 26(a)(2), and 27(c)(2) of the Act if the life insurer complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee, depositor, or custodian for the separate account, and meets the conditions enumerated in paragraphs (A), (B), and (C) of Rule 6e–2(b)(13)(iii). Hutton Life will comply with section 26 of the Act and paragraphs (A), (B), and (C) of Rule 6e–2(b)(13)(iii), except that the Separate Account will hold shares of the Fund under an open account arrangement without the use of stock certificates and Hutton Life will not be acting as trustee or custodian pursuant to a trust indenture or other document, in order to comply with California Code, Insurance Code, section 10506. Applicants submit that the exemptive relief requested herein is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

16. Applicants represent that Hutton Life proposes to make no front-end deduction from the single premium for sales load. However, Hutton Life will incure expenses related to the sale of the Policy, including commissions paid to sales personnel and the costs of promotion and sales administration. Hutton Life proposes to deduct a sales load to compensate Hutton Life solely for expenses related to the sale of the Policy, including commissions, costs of promotional activity, sales administration, and like expenses. The sales load, along with certain other charges, would be deducted on a deferred basis from a policyowner's account value so that they would be collected in equal monthly installments during policy years two through ten. In addition, prior to the end of the tenth policy year, any unrecovered portion of the deferrd load would be collected from account value in the event of a full surrender and a pro rata portion would be deducted in the event of a partial surrender.

17. Applicants submit that imposition of the sales load in the form of an

"asset-based" deferred charge is more favorable to a policyowner than a charge that is deducted from the premium. Applicants submit that a deferred sales load is in the best interests of policyowners because the deferred sales load and surrender charge will result in greater amounts of money being available for investment on a policyowner's behalf and generally higher account values under the Policy.

18. Section 27(c)(1) of the Act requires that a periodic payment plan certificate issued by an investment company be a "redeemable security." Rule 22c–1 prohibits a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except a price based on the current net asset value of such security. Applicants submit that sections 2(a)(32) and 27(c)(1) and Rule 6e–2(b)(13)(iv) could be read so as not to contemplate that a redeemable security would include a security that provides for imposition of a surrender charge upon redemption or surrender. Sections 2(a)(32) and 22(c) and Rules 22c–1 and 6e–2(b)(12) could be read so as not to contemplate deduction of a surrender charge upon redemption or surrender of a redeemable security. Applicants believe that the assessment of the surrender charge upon certain redemptions is not and should not be construed as a restriction on redemption that would prevent the Policy from qualification as a "redeemable security." Applicants state that the surrender charge is designed to recover the unrecovered amount of the deferred load under the Policy upon a full or partial surrender. Assessing the deferred load on a deferred basis is beneficial to policyowners in that it permits the entire single premium paid to be invested in the Variable Accounts from the time the Policy is issued.

19. Applicants request an exemption from section 26(a)(2)(C) and 27(c)(2) to permit the deduction of deferred sales load from a Policyowner's account value. Applicants submit that imposition of the deferred charge is consistent with the protection of investors in that imposition of the sales load in the form of an "asset-based" deferred charge is more favorable to a policyowner than a charge that is deducted from the premium.

20. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to permit deduction of charges for the cost of insurance and state and local premium tax from a policyowner's account value. Applicants believe that it would be more equitable and beneficial to policyowners to deduct the cost of insurance and the charge for state and local premium tax as an asset-based charge from policyowner account value rather than deduct these charges from the single premium. This would permit a greater amount of assets to be invested in the Variable Accounts, thereby increasing a policyowner's account value and perhaps increasing the death benefit and therefore exemptive relief from sections 27(c)(2) and 26(a)(2) is appropriate.

21. Applicants propose to deduct from a policyowner's account value a charge for the Minimum Guaranteed Death Benefit equal to 1.0% of the single premium for Policies classified as preferred (non-smoker) standard and preferred (non-smoker) substandard risks and 1.5% of the single premium for Policies classified as standard or substandard risks. Applicants also propose to assess a mortality and expense risk charge against the Variable Accounts equal to an annual rate of 0.60% of the daily assets in the Variable Accounts. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit these deductions.

Applicants submit that such charges are consistent with the standards that the Commission has proposed to paragraph (b)(13)(iii) of Rule 6e–2 in the proposed conforming amendments.

22. Applicants propose to satisfy the sales load requirements of Rule 6e–2(b)(13)(i) by using cost of insurance charges based on the 1980 CSO Table and life expectancies of insureds based on that Table. Applicants believe that use of the 1980 CSO Table is consistent with the general purposes of the 1940 Act, does not present any of the issues or abuses that the 1940 Act is designed to prevent, and will permit investors to receive the benefit of lower cost of insurance charges. Applicants request an exemption from the provisions of Rule 6e–2(b)(13)(i) and (c)(4) to the extent necessary to allow Hutton Life to deduct cost of insurance charges based on the 1980 CSO Table and to comply with sales load limitations by using both life expectancies and cost of insurance charges based on the 1980 CSO Table.

23. Applicants request an exemption from paragraph (b)(15) of Rule 6e–2 and section 9(a), (13)(a), (15)(a), and (15)(b) of the Act to the extent necessary to permit Applicants, as well as any future separate accounts that invest in the same underlying management company as Applicants and the sponsors of which agree to stated conditions, to rely on the relief provided under Rule 6e–2(b)(15), even though shares of the underlying fund may in addition to the Separate Account, be offered to separate accounts of Hutton Life or other affiliated or unaffiliated life insurers offering variable annuity contracts or scheduled or flexible premium variable life insurance contracts. Mixed and shared funding should benefit owners of variable contracts by eliminating a singinficant portion of the costs of establishing and administering separate funds. Granting the requested relief should result in an increased amount of assets available for investment by the Fund as well as any future underlying funds in which the Separate Account may invest along with other separate accounts. As a result of mixed and shared funding, the underlying fund will not be managed with the intent to favor one variable life or annuity product over another or to favor or adversely affect one insurance company over another. Applicants submit that no regulatory purpose would be served by applying the eligibility restrictions to all persons covered by sections 9(a) and not granting the exemption otherwise provided under Rule 6e–2(b)(15) simply because of mixed or shared funding. Granting the exemption would in no way alter the investment company's exposure to person disqualified under section 9(a).

Applicants' Condition

In order to comply with sections 9(a), 13(a), 15(a) and 15(b) of the Act, Applicants consent to several conditions to the order granting the exemptions requested.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–7053 Filed 3–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15637; 812–6651]

The Prudential Insurance Co. of America et. al.; Application for Exemption

March 24, 1987.

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Prudential Insurance Company of America and The Prudential Variable Contract Account–24.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 22(d) and Rule 11a–2(e).

Summary of Application: Applicants seek an order to permit them to make certain offers of exchange to holders of certain group variable contracts.

Filing Date: The application was filed on March 13, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Prudential Insurance Company of America and The Prudential Variable Contract–24, Prudential Plaza, Newark, NJ 07101.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Jeffrey M. Ulness (202) 272–3027 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. The Prudential Insurance Company of America ("Prudential") and The Prudential Variable Contract Account–24 ("VCA–24"), both located at Prudential Plaza, Newark, NJ 07101, are, respectively, a mutual life insurance company organized under New Jersey law and a separate account of Prudential established for the purpose of funding certain group variable contracts (the "Contracts") issued by Prudential. VCA–24 is registered under the Act as a unit investment trust.

2. The Contracts are issued to employers and associations ("Contractholders"). No sales charge is deducted from participants' contributions under the Contracts as they are made. A deferred sales charge will in some circumstances be assessed in the event of a full or partial withdrawal of contributions from participants' VCA–24 accumulation accounts. The deferred sales charge assessed at the time of each such withdrawal is a specified percentage of the lesser of: (i) The participant's total contributions (not previously withdrawn) to the account from which the withdrawal is made or (ii) the amount withdrawn. Amounts not previously withdrawn are calculated on a first-in, first-out basis. The specified percentages vary depending on the number of years the participant has participated in the program of which the Contracts are a part and the different kinds of retirement arrangements funded by the Contracts.

3. The deferred sales charge is designed to reimburse Prudential for sales expenses, such as compensation paid to sales personnel, costs of advertising and sales promotions, prospectus costs, and costs of sales administration. Traditionally, these expenses are recouped through a sales load deducted from contributions when they are made, but the deferred sales charge is preferable from the standpoint of the investor because it permits investment of the entire contribution and, in many cases, permits withdrawal without the imposition of any sales charge whatsoever.

4. Prudential has since 1968 offered variable contracts providing for participation in the Prudential Variable Contract Account–2 ("VCA–2"), which is registered under the Act as an open-end management investment company. Contracts providing for participation in VCA–2 have been issued to employers and associations in connection with tax-deferred annuities. Contracts providing for participation in VCA–2 have generally been issued along with a separate, companion fixed-dollar annuity contract and are collectively referred to as Prudential's Group Tax-Deferred Annuity Program (the "TDA Program"). Prudential deducts a sales charge from contributions to VCA–2 on behalf of participants in the TDA Program before those contributions are invested in VCA–2. The maximum sales charge is 4%, which may drop to 2.5% under terms described in the application. Applicants propose to offer to TDA Program participants employed by TDA Contractholders who also purchase the Contracts, the opportunity to exchange their interests in the TDA Program for interests in the Contracts.

5. The Commission has previously granted the relief requested in the application to two other Prudential separate accounts which will participate in making the offers of exchange. Release No. IC–15449 (December 2, 1986). VCA–24 was organized since the granting of those exemptions and seeks the same relief.

6. The proposed exchanges would be made without any charge to the TDA Program participants. Participants' interests withdrawn from VCA–2 and any companion fixed-dollar annuity contract in connection with the exchange would be invested at net asset value in VCA–24. Amounts invested in the Contracts as a result of the exchange would be considered to be contributions to VCA–24 for purposes of calculating the contingent deferred sales load upon subsequent withdrawals from the Contracts. However, because a front-end sales load would already have been paid on such amounts, Applicants would not charge any contingent deferred sales load on withdrawals until the participant had withdrawn an amount equal to the amount the participant had transferred from the TDA Program. Because contributions are computed to be withdrawn on a first-in, first-out basis, and amounts transferred from the TDA Program will be considered to be withdrawn first, no deferred sales load will be charged on appreciation attributable to purchase payments made for interests in VCA–2 which may be exchanged for interests in VCA–24.

7. For Participants who transfer all or a part of their interests in the TDA Program to the Contracts, the calculation of the defered sales load would be made using as a starting date the date of their first contribution to the TDA Program. This adjustment would apply to withdrawals of all contributions made under the Contracts which are in excess of and are made after the initial transfer of the participant's interest from the TDA Program to the program of which the Contracts are a part.

8. Exemption from the provisions of Rule 11a–2(e) is sought to the extent necessary to make the proposed offers because the language of the rule might be read to require that the offering account track, in each instance where a withdrawal is made after the exchange, whether any of the withdrawal is attributable to purchase payments made for the exchanged security (or appreciation thereon) transferred in connection with the exchange. Applicants will allow TDA Program participants to withdraw from the program of which the Contracts are a part of the total amount transferred from the TDA Program, without payment of deferred sales charges that might otherwise be charged upon such withdrawals. All withdrawals of contributions under the program of which the Contracts are a part, regardless of where those withdrawals may be traced to purchase payments

transferred in connection with the exchange or to subsequent contributions, would be made without imposition of a deferred sales charge until the total amount withdrawn equalled the amount transferred.

9. Applicants purpose to institute the foregoing procedure because TDA participants who exchange their interests will always be assured that their first withdrawals from the program of which the Contracts are a part will be free of any deferred sales charge, as long as those withdrawals do not exceed the amount transferred in connection with the exchange, even though the withdrawals might actually consist of contributions made subsequent to the exchange transfer.

10. Applicants state that their system comports with the policies underlying Rule 11a–2, which are to prevent charging duplicative sales loads as the result of an exchange from a separate account with a front-end sales load to one with a deferred sales load. Applicants' procedure might in some instances result in the charging of a sales load on the withdrawal of contributions traceable to the exchange of interests in VCA–2, but this will only happen where the participant in question has already received an earlier and offsetting benefit in the form of a waiver of sales loads which otherwise would have been payable to previous withdrawals consisting of contributons made subsequent to the change.

11. Applicants assert that the objectives of section 22(d) would not be impaired if Applicants are permitted to give participants who transfer all or part of their TDA interests to the Contracts credit for their years of participation in TDA Programs. Applicants' proposal would not unfairly discriminate against other Contract owners or participants since transferring TDA Program participants are properly distinguishable from other Contract participants. Applicants further state their belief that sales expense related to contributions from transferring TDA Program participants should be lower than those related to future contributions from other Contract participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–7051 Filed 3–30–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16404]

Union Carbide Corp.; Application and Opportunity for Hearing

March 20, 1987.

Notice is hereby given that Union Carbide Corporation, a New York corporation (the "Company"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities Exchange Commission (the "Commission") that the trusteeship of Manufacturers Hanover Trust Company ("Manufacturers") under the indentures set forth below, which have been qualified under the Act, and the trusteeship of Manufacturers under an indenture dated as of December 1, 1986, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor.

In support of its application, the Company states as follows:

1. The Company has entered into an indenture with Manufacturers as trustee, dated as of January 1, 1986 as supplemented by a First Supplemental Indenture dated as of June 9, 1986, and a Second Supplemental Indenture dated as of December 10, 1986, which was qualified under the Act pursuant to an application on Form T–3 filed with the Commission (File No. 22–14590), pursuant to which were issued thereunder:

(a) 13¼% Senior Notes due January 31, 1993;

(b) 14¼% Senior Notes due January 31, 1996; and

(c) 15% Debentures Due 2005, some of which are presently outstanding.

2. The Company has entered into an indenture, with Manufacturers as trustee, dated as of August 15, 1979, which was qualified under the Act, and filed with the Commission as an Exhibit to the Registration Statement (Registration No. 2–651114) pursuant to which 9.35% Debentures Due 2009, some of which are presently outstanding, were issued.

3. The Company entered into an indenture, with Morgan Guaranty Trust Company, under which Manufacturers is successor trustee, dated as of January 15, 1975, which was qualified under the Act, and filed with the Commission as an Exhibit to the Registration Statement (Registration No. 2–52546), pursuant to which 8½% Debentures Due 2005, some of which are presently outstanding, were issued.

4. The Company has entered into an indenture, dated as of December 1, 1986, with Manufactures as trustee, which will initially not be qualified under the Act, pursuant to which $200,000,000 principal amount of the Company's 8.60% Senior Notes due December 15, 1989, and 9.10% Senior Notes due December 15, 1990 were issued. Pursuant to the terms of the certain Note Purchase Agreements between the Company and the purchasers of said Notes, the Company has convenanted to effect registration of said Notes within 90 days of issuance, and if such registration is effected, the Company is required to qualify simultaneously said indenture under the Act.

5. The Company is not in default under any of the aforementioned indentures. The Company's obligations under all such indentures are wholly unsecured and unsubordinated.

6. The provisions of all the aforementioned indentures are not so likely to involve a material conflict of interest as to make necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as Trustee under any of said indentures.

7. The Company has waived notice of hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with the matters referred to herein.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document (File No. 22–16404) on file in the offices of the Commission at the Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than April 13, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed:

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting this application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-7052 Filed 3-30-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1-A; Rev. 14]

Delegation of Authority; Associate Deputy Adminstrator for Management and Administration et al.

Delegation of Authority No. 1-A (Revision 13) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, authority is hereby delegated to the following officials in the following order:

(1) Associate Deputy Administrator for Management and Administration
(2) Associate Deputy Administrator for Special Programs
(3) General Counsel

to perform, in the event of the absence or incapacity of the Administrator and the Deputy Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting in any of the positions in paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

Effective Date: March 31, 1987.

Dated: March 19, 1987.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 87-7029 Filed 3-30-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2269]

Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 5, 1987, I find that Jones County in the State of Mississippi constitutes a disaster loan area because of severe storms, tornadoes and flooding occuring on February 28, 1987. Eligible persons, firms, and organizations may file applications for physcial damage until the close of business on May 4, 1987, and for economic injury until the close of business on December 7, 1987, at:

Disaster Area 2 Office, Small Business Administration 120 Ralph McGill Boulevard, 14th Floor Atlanta, Georgia 30308

or other locally announced locations. The interest rates are:

Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	7.500%
Businesses without credit available elsewhere	4.000%
Businesses (EIDL) without credit available elsewhere	4.000%
Other (non-profit organizations including charitable and religious organizations)	9.500%

The number assigned to this disaster is 226912 for physical damage and for economic injury the number is 651000.

(Catalog of Federal Domestic Assistance Programs Nos. 59001 and 59008).

Note: Reissued to correct address of Disaster Area 2 Office Replaces 52 FR 8697, published March 19, 1987.

Dated: March 24, 1987.

Bernard Kulik.

Deputy Associate Administator for Disaster Assistance.

[FR Doc. 87-7024 Filed 3-30-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #6514]

Texas; Declaration of Disaster Loan Area

Calhoun, Jackson, and Matagorda Counties in the State of Texas constitute a disaster area because of the closure of the oyster grounds in San Antonio Bay on December 20, 1986, due to flooding of the Guadalupe and San Antonio Rivers which began on or about December 18, 1986. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere my file applications for economic injury assistance until the close of business on December 28, 1987, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9.5 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 25, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-7025 Filed 3-30-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Medford-Jackson County Airport, Medford, OR; Noise Exposure Map, Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Medford-Jackson County Airport (MFR) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for MFR under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before September 15, 1987.

EFFECTIVE DATES: The effective date of the FAA's determination on the MFR noise exposure maps and of the start of its review of the associated noise compatibility program is March 20, 1987. The public comment period ends April 17, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports

Division, ANM–611, 17900 Pacific Hwy S., C–68966, Seattle, WA 98168.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for MFR are in compliance with applicable requirements of Part 150, effective March 20, 1987. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 15, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

MFR submitted to the FAA noise exposure maps, descriptions, and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by MFR. The specific maps under consideration are Figures 5c and 5d in the submission. The FAA has determined that these maps for MFR are in compliance with applicable requirements. This determination is effective on March 20, 1987. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for MFR, also effective on March 20, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 15, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue SW., Room 615, Washington, DC

Federal Aviation Administration, Airports Division, ANM–600, 17900 Pacific Hwy. S., C–68966, Seattle, Washington 98168

Medford-Jackson County Airport, Medford, Oregon

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, March 20, 1987.

Cecil C. Wagner,

Acting Manager, Airports Division.

[FR Doc. 87–7023 Filed 3–30–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen,

Arab Republic, Yemen, Peoples Democratic Republic of.

J. Roger Mentz,

Assistant Secretary for Tax Policy.

[FR Doc. 87-6982 Filed 3-30-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 24, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0145
Form Number: None
Type of Review: Reinstatement
Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal
Description: This information is used in a voluntary program to receive internationally recognized Customs certification that intermodal containers/road vehicles meet construction requirements of international Customs conventions. Such certification facilitates international trade by reducing intermediate international controls.
Respondents: Businesses
Estimated Burden: 3,124 hours
Clearance Officer: B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Ave., NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Alchol, Tobacco and Firearms

OMB Number: 1512-0185
Form Number: ATF 5400.5
Type of Review: Extension
Title: Report of Theft or Loss of Explosives
Description: This form is used by any person who has knowledge of theft or loss of explosive materials. The form identifies respondents; location of theft or loss; amount; type; size of explosives; and any other details available at the time of the report. The form is used by ATF and others for investigative purposes.
Respondents: Businesses
Estimated Burden: 450 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Ave., NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87-6980 Filed 3-30-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0069
Form Number: CF 3461
Type of Review: Revision
Title: Entry Immediate/Delivery (CF 3461 and CF 3461 Alternate)
Description: This form will be used by importers and brokers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Businesses
Estimated Burden: 908,413 hours
OMB Number: 1515-0052
Form Number: CF 4609
Type of Review: Extension
Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred
Description: Persons who violate provisions of the Tariff Act are entitled to seek mitigation of any penalties and forfeitures incurred. Many cases are solved by inspectors on the line. This form gives the violator the opportunity to claim mitigation and provides a record for appeals.
Respondents: Individuals
Estimated Burden: 1,166 hours
Clearance Officer: B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Ave., NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB Number: 1557-0162
Form Number: None
Type of Review: Extension
Title: Capital Changes (Equity Capital and Subordinated Debt)
Description: 12 U.S.C. 51, 51a, 57 and 59 require that banks obtain Office approval prior to changing capital. The letter of intent requests only the minimum information needed for the Office to render a decision. The Notice of completion of change represents the bank's conformity to statute and Office policy.
Respondents: Businesses
Estimated Burden: 600 hours
OMB Number: 1557-0147
Form Number: None
Type of Review: Extension
Title: National Bank Lending Limits
Description: The regulation, in part, imposes certain recordkeeping requirements that will permit national banks to expand their lending to foreign governments and their related entities.
Respondents: Businesses
Estimated Burden: 12,000 hours
Clearance Officer: Eric Thompson (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545-0044
Form Number: 973
Type of Review: Revision
Title: Corporation Claim for Deduction for Consent Dividends
Description: Internal Revenue Code section 565 allows a corporation to treat as a dividend certain amounts consented to as dividends by its shareholders. The corporation uses Form 973 as an attachment sheet for the shareholders' Form 972 and attaches Forms 973 and 972 to the corporation's income tax return to claim the deduction for consent dividends.
Respondents: Businesses
Estimated Burden: 358 hours

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 87–6981 Filed 3–30–87; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Application for Recordation of Trade Name; Continental Foods, Inc. (S.A.)

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Continental Foods, Inc. (S.A.)," a corporation organized under the laws of the State of Delaware, located at 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

The application states that the trade name is used in connection with soups and bouillon cubes, manufactured in the United States and the Dominican Republic.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before June 1, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: March 25, 1987.

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87–7010 Filed 3–30–87; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 1987; 87–41]

Tuna Fish; Tariff-Rate Quota; Calendar Year 1987

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1987.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, TSUS, is based on the United States pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1987 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Karen L. Cooper, Quota Program Manager, Admissibility Requirements Section, Commercial Compliance Division, Office of Commercial Operations, U.S. Customs Service, Washington, DC 20229, (202/566–8592).

It has now been determined that 91,538,769 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1987, at the rate of 6 percent ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 112.30, TSUS.

(QUO–2–CO:T:C:C:A)

Dated: March 3, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87–7009 Filed 3–30–87; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 24, 1987.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

Reinstatement

1. Department of Medicine and Surgery.
2. Application for Employment—Professional Nurse.
3. VA Form 10–2850a.
4. VA officials will use the information to evaluate education, professional experience and credentials in support of employment decision in hiring nurses.
5. On occasion.
6. Individuals or households.
7. 51,600 responses.
8. 17,200 hours.
9. Not applicable.

[FR Doc. 87–6976 Filed 3–30–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for April 7, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 7, 1987, from 8:30 a.m. until 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Approval of Minutes of March Meeting.
2. Final Regulations:
   Part 611—Farm Credit System Capital Corporation; Organization
   Part 614—Borrower Rights
3. Uniform Financial Institution Rating System
4. Liquidations—Recommendations for Final Closings and Charter Cancellations [1]

Dated: March 27, 1987.

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-7081 Filed 3-27-87; 11:21 am]

BILLING CODE 6705-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 24, 1987.

TIME AND DATE: 10:00 a.m., Thursday, March 26, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. Rushton Mining Company, Docket Nos. PENN 85-253-R, etc. (Consideration of a petition for discretionary review; and
3. Western Fuels-Utah, Inc., Docket Nos. WEST 86-108-R, etc.

It was determined by a unanimous vote of Commissioners that these items be added to the agenda and no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-7073 Filed 3-27-87; 10:37 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 6, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7062 Filed 3-27-87; 3:39 pm]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 7, 1987.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item(s). Although the conference is open for public observation, no public participation is permitted.

MATTER TO BE DISCUSSED:

Finance Docket No. 28272

Star Lake Railroad Company—Rail Construction and Operation in McKinley County, New Mexico

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 87-7095 Filed 3-27-87; 12:22 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 30, April 6, 13, and 20, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 30

Friday, April 3

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of April 6—Tentative

Monday, April 6

2:00 p.m.
Briefing on NRC Strategic Planning (Public Meeting)

Thursday, April 9

2:30 p.m.
Discusion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

4:00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Friday, April 10

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of April 13—Tentative

Wednesday, April 15

10:00 a.m.
Briefing by Office of Special Project (Public Meeting)

2:00 p.m.

[1] Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Briefing by DOE on the TMI–2 Core Examination Program (Public Meeting)

Thursday, April 16

11:00 a.m.
Periodic Meeting with the Advisory Panel for the Decontamination of TMI–2 (Public Meeting)
2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, 6, & 7)
4:00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of April 20—Tentative

Thursday, April 23

4:00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

March 26, 1987.

[FR Doc. 87–7159 Filed 3–27–87; 3:29 pm]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

NOTICE OF MEETING:

STATUS: Open. The Council may hold an executive session after its meeting on April 9 to discuss civil litigation matters with counsel.

TIME AND DATE: 9:00 a.m., April 9, 1987.

PLACE: Village Red Lion, 100 Madison Street, Missoula, Montana.

MATTERS TO BE CONSIDEREED:

1. Introduction to the Western Electricity Study.
2. Status Report on Bonneville Power Administration's In-region Marketing Program.
3. Council Review of Bonneville Power Administration's Work Plans to Implement the Northwest Conservation and Electric Power Plan.
4. Status Report on Federal Appliance Efficiency Legislation.
5. Report on the Council's Congressional Testimony Regarding FY 88 Federal Agency Budgets.
6. Council Business.
7. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–7089 Filed 3–27–87; 11:48 am]

BILLING CODE 0000–00–M

POSTAL SERVICE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 9755, March 26, 1987.

PREVIOUSLY ANNOUNCED DATE OF MEETING: April 6, 1987.

CHANGE: Addition of the following agenda item:

Consideration of court ruling in *Active Fire Sprinkler Corporation* v. *USPS.*

AUTHORITY: By telephone vote on March 26, 1987, the Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirements of the Government in the Sunshine Act because it is likely to specifically concern the Postal Service in a civil action or proceeding.

In accordance with section 552b(f)(1) of Title 5, United States Code and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel has certified that in his opinion the additional agenda item of the meeting may properly be closed to the public for the reason cited above.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 87–7061 Filed 3–27–87; 10:21 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 6, 1987:

A closed meeting will be held on Tuesday, April 7, 1987, at 3:00 p.m. An open meeting will be held on Thursday, April 9, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 7, 1987, at 3:00 p.m., will be:

Formal order of investigation.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Chapter 11 proceeding.
Consideration of amicus participation.

The subject matter of the open meeting scheduled for Thursday, April 9, 1987, at 10:00 a.m., will be:

Consideration of whether to issue a release proposing an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate as an exempted security, solely for purposes of futures trading thereon, foreign government debt (a) issued by any country the sovereign debt of which is rated in one of the two highest rating categories of two nationally recognized rating agencies or (b) issued by the governments of Australia, France and New Zealand. For further information, please contact David L. Underhill at (202) 272–2375.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272–2091.

Jonathan G. Katz,

Secretary.

March 27, 1987.

[FR Doc. 87–7174 Filed 3–27–87; 3:56 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientic Instruments; Thomas Jefferson University

Correction

In notice document 87-5984 beginning on page 8634 in the issue of Thursday, March 19, 1987, make the following correction:

On page 8635, in the first column, in the first complete paragraph, in the next to the last line, "Commission" should read "Commissioner".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientifc Instruments; Woods Hole Oceanographic Institution et al.

Correction

In notice document 87-5836 beginning on page 8494 in the issue of Wednesday March 18, 1987, make the following corrections:

1. On page 8495, in the first column, in the second complete paragraph, in the next to the last line, the date should read, "February 25,".

2. On the same page, in the second column, in the 10th line, "SC-51" should read "SF-51".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 60117-6212]

Proposed Federal Information Processing Standard_____, C

Correction

In notice document 87-412 beginning on page 851 in the issue of Friday, January 9, 1987, make the following correction:

On page 853, in the first column, in paragraph 11.1, the first sentence is corrected to read, "This publication is effective [6 months after date of publication of final document in the Federal Register].".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-43-86]

Interest Charge; Domestic International Sales Corporation (DISCs)

Correction

In proposed rule document 87-2015 beginning on page 3256 in the issue of Tuesday, February 3, 1987, make the following corrections:

§ 1.991-1 [Corrected]

1. On page 3259, in the third column, in § 1.991-1(e), in the 18th line, remove "and the Act".

§ 1.995-8 [Corrected]

2. On page 3266, in the first column, in § 1.995-8(e), in the *Example*, in paragraph (iii), in the first column entry, in the fourth line, "$150" should read "$150,000".

§ 1.995(f)-1 [Corrected]

3. On page 3287, in § 1.995(f)-1, in the third column, in paragraph (d)(2)(i)(A), in the second line, "(3)" should read "(e)"; and in paragraph (d)(2)(iii), in the eighth line, "(3)" should read "(e)".

4. On page 3268, in the first column, in the same section, in paragraph (d)(4)(ii), in *Example (1)*, in the 16th line, "new" should read "net"; and in the second column, in the 5th, 6th, and 7th lines, remove "loss deduction of $10,000 of ordinary income, plus $5000 of deferred DISC income, less the net operating".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR-225-81]

Windfall Profit Tax; Rules Relating to Production From a Unitized Property of Imputed Stripper Well Crude Oil, Imputed Heavy Crude Oil, and Imputed Newly Discovered Crude Oil

Correction

In proposed rule document 86-21957 beginning on page 34653 in the issue of Tuesday, September 30, 1986, make the following corrections:

§ 51.4996-5 [Corrected]

1. On page 34657, in the second column, in § 51.4996-5(d)(2)(iii), in the fourth line, "or" should read "an".

2. On page 34658, in the second column, in the same section, in paragraph (e)(3)(ii), in the next to the last line before the formula, insert "to" between "equal" and "A"; and in the formula move the "D" so that it appears as a numerator above the "E".

3. On page 34660, in the same section, in paragraph (e)(7), in the first column, in *Example (3)*, in the 13th line, "(e)(1)(i)" should read "(e)(3)(i)"; and in the second column, in the last line of the *Example*, insert "imputed" between "percent" and "newly".

4. On the same page, in the same section and same paragraph, in the third column, in *Example (7)*, in the 7th and 8th lines, remove "unitization, N qualified as a stripper well property, but all".

5. On page 34661, in the same section, in paragraph (f) in the second column, in the 12th line, insert "unitized" between "separate" and "property".

BILLING CODE 1505-01-D

federal register

Tuesday
March 31, 1987

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2
Animal Welfare; Proposed Rules

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 84-027]

Animal Welfare; Definition of Terms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Part 1—"Definition of Terms." The changes comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131 et seq.) contained in Pub. L. 99-198, "The Food Security Act of 1985" enacted December 23, 1985. This proposal would also expand the list of definitions in order to facilitate enforcement of the Act and the regulations and to inform the public of the Act's requirements. These proposed amendments complement the changes the Agency is proposing to Parts 2 and 3, some of which are also required by Pub. L. 99-198.

DATE: Written comments must be received on or before June 1, 1987, and should refer to Docket 84-027.

ADDRESS: Written comments concerning this proposal should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 756 of the Federal Building, 8 a.m. to 4 p.m., Monday to Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend and expand 9 CFR Part 1, entitled "Definition of Terms" which provides the definitions for the regulations in 9 CFR Part 2, and the standards in 9 CFR Part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards are established pursuant to the authority in the Animal Welfare Act, as amended (U.S.C. 2131 *et seq.*). This law requires the Secretary to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). These definitions will provide proper guidance to the public, licensees, and registrants in their responsibilities under the Act.

Many of the presently existing definitions have been expanded, reworded, or revised based on the experience the Agency has gained in administering the Act. The Department solicits comments and recommendations concerning these proposed definitions.

The definitions proposed in this document have been organized alphabetically so users may more easily locate a particular term.

The proposed amendments to the "Definitions" are as follows:

The term "ambient temperature" has been added to define better the areas of temperature restrictions for animal housing and transportation.

The term "animal" has been reworded to include the term "teaching." All warmblooded animals are covered by the Act, however, the Department will still exclude from regulation poultry and birds, laboratory-bred species of rats and mice, farm animals, and other animals used solely for food or fiber (fur), or as pack or work animals.

The term "animal act" has been added to identify and differentiate exhibitors with performing animals from mere exhibited animals.

The term "attending veterinarian" has been reworded to indicate that the veterinarian has direct or delegated responsibilities for activities involving animals at licensed and registered facilities. This includes not only the treatment of sick or injured animals, but also programs of nutrition, preventive medicine (vaccinations), internal and external parasite control, euthanasia, and general sanitation and animal husbandry practices. In the case of research facilities, he/she is also responsible for evaluating the type and amount of anesthetic, analgesic, and tranquilizing drugs used on animals during actual research, testing, or experiments, including pre- and post-procedural care, where appropriate, to relieve unnecessary pain and distress in the subject animals. It is also proposed that the "attending veterinarian" demonstrate the acquisition of training or experience in the care and management of the species being attended, and that the veterinarian be accredited by the U.S. Department of Agriculture in accordance with regulation to be issued under the Animal Welfare Act.

The term "business hours" has been added as that term is used in the standards. This term will apply to all licensees and registrants regardless of their type of operation (part-time, full-time, or seasonal operation).

The term "cat" has been reworded so as to include hybrid crosses.

The term "class 'A' dealer" has been reworded to clarify the limitations of a class A license. The term "class 'B' licensee" has been reworded to clarify the requirements for a class B licensee. A class "B" licensee includes those persons who operate as brokers and as operators of auction sales. Although a broker or an operator of an auction sale does not usually take actual physical possession of the animals and does not usually hold animals in any facilities, he does negotiate or arrange for their sale in commerce and is, therefore, a class "B" licensee. A class "B" licensee is also allowed to exhibit animals as a minor part of the business. The term "class 'C' licensee" has been reworded to clarify the requirements for a class C exhibitor's license and to indicate that a class "C" exhibitor is allowed to buy and sell animals, as a minor part of his business, or to maintain his animal collection. The type of license (B or C) is determined by the applicant's primary business.

The term "commerce" has been reworded to indicate that intrastate activities are considered to be in commerce for the purposes of the Act.

The term "committee" has been added and describes the Institutional Animal Care and Use Committee required by the 1985 amendments to the Act.

The term "dealer" has been reworded to define those persons requiring a dealer's license and to specify certain areas and operations which are excluded or exempted from licensing requirements. The term "dealer" includes brokers and operators of auction sales selling animals other than domestic livestock (horses, cattle, sheep, goats, and pigs) and poultry. The term "dealer" also includes anyone selling any parts of an animal, such as unborn animals, organs, limbs, blood, serum, or other parts. This term is not intended to include the following types of operations: (1) Any retail outlet which meets the definition of a "retail pet store" as defined in this part; or (2) any person who sells no more than $500 worth of animals other than dogs or cats

or wild or exotic animals in any calendar year.

In addition, APHIS has determined that the following persons derive less than a substantial portion of their income from dealer activities and thus need not obtain a license: (1) Any person who maintains a total of three (3) or fewer breeding female dogs or cats per household or premises and who sells the offspring of such dogs or cats, which were born and raised on their premises, for pets or exhibition purposes; or (2) any person who sells fewer than 25 dogs or cats per year, which were born and raised on their premises, for research purposes or to any research facility; or (3) any person who arranges for transportation or transports animals only for the purposes of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment; or (4) any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (fur); or (5) any person who breeds and raises domestic pet animals (as indicated in the definition of retail pet store) for direct retail sales to others for their own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (such as a purebred dog or cat fancier); or (6) any person who buys animals only for his own use or enjoyment and does not sell or exhibit animals or otherwise qualify for licensing. These exclusions will be included in the licensing regulations in 9 CFR Part 2. The sale of wild or exotic animals or the wholesale of other animals always requires a license.

The term "dog" has been reworded to include dog hybrid crosses.

A definition of "endangered species" has been added.

The term "euthanasia" has been changed to define humane destruction of an animal. The method of euthanasia used should be one which is consistent with the recommendations of the American Veterinary Medical Association's current Panel on Euthanasia or one which is approved, in writing, by the Area Veterinarian in Charge for specific instances. Exceptions to these recommended methods of euthanasia in research facilities would have to be justified in the research protocol and approved by the attending veterinarian and the Institutional Animal Care and Use Committee.

The definition of "exhibitor" has been reworded to identify those persons who are required to obtain a license as an exhibitor. Although the definition of exhibitor includes certain exemptions in regard to State and county fairs and the advancement of agricultural arts and sciences, any animal exhibits at State and county fairs, livestock shows, rodeos, or the like, that are not domestic livestock and do not have the purpose of advancing agricultural arts and sciences, such as petting zoos utilizing dogs, cats, guinea pigs, or rabbits, for example, or clown acts with dogs or monkeys and animal prizes given by games of chance, must obtain a license as an exhibitor under the Act. The term "exhibitor," as defined in the Act, also has an exclusion for retail pet stores. A "retail pet store" has been defined in this part. Any pet store which exhibits any animal(s) other than pet animals will be required to obtain a license as an exhibitor. If such animals are sold, the pet store will be required to have a dealer's license.

The term "exotic animal" has been added to indicate that these are animals which are not normally found in the United States, either as domesticated or wild animals. Dealers and exhibitors of exotic animals must obtain a license under the Act.

The term "farm animal" has been reworded to identify what animals are farm animals and specifically to include certain animals if used for purposes of food, fiber, or work only.

The terms "Federal agency," "Federal award," and "Federal research facility," were defined by the 1985 amendments to the Act and have been added to the definitions.

The term "handling" is being removed from Part 3, Subparts E and F (§§ 3.111 and 3.135), and added to the definitions in this part and to the Regulations in Part 2. This is being done in order to apply the same requirements to all covered animals and to eliminate repetitive standards from each of the subparts in Part 3.

The term "housing facility" has been added to define the areas covered by such term which are subject to inspection and compliance with the regulations and standards. This definition is broad in scope and covers the land immediately surrounding an animal facility and any accumulation of junk, trash, or weeds thereon that might harbor or conceal various pests such as rats, mice, mosquitoes, and flies or that might be potentially harmful to the animals.

Over the past few years, new types of animal dealer operations have become more prevalent whereby domestic animals are crossed with wild or exotic animals, such as dogs crossed with wolves and buffalo crossed with domestic cattle, with the offspring being sold for various purposes. There has been discussion between the Agency and the industry whether such hybrid cross animals should be considered wild or domestic animals for purposes of the Act. The general consensus within the Agency has been that such hybrid cross animals should be considered to be domesticated animals. An additional problem is that there is no way to prove if an animal is ¾ or ½ wild or domestic, nor can such a decision be made by observing the animal. Even if such categories could be proven, the problem would still remain as to where the line should be drawn between a wild animal and a domestic animal. Therefore, for the purposes of the Act, the term "hybrid cross" has been added to the definitions and such a cross is determined to be a domestic animal.

The standards require impervious surfaces in animal facilities but do not define this term. APHIS has issued memorandums explaining and defining this term, but these have not always received wide distribution in the field and are not generally available to the public. The term "impervious surface" has now been added to the definitions. In order for building surfaces and enclosure surfaces to be impervious to moisture, the construction material must be composed of, or treated with, a material which is nonpermeable, nonporous, and is incapable of being penetrated by moisture or fluids. Nontoxic paints, varnish, shellac, plastic type coatings, sealed cement, metal and plastics are acceptable surfaces if maintained in good condition. Untreated wood or wood coated with whitewash or linseed oil is not acceptable nor are any substances that do not cause such surfaces to be impervious or that are not well maintained so as to be impervious. Exceptions to these provisions may be permitted if provided for in an approved protocol, e.g., for simulation of a natural environment.

Whether an animal facility should be classified as an indoor housing facility or an outdoor housing facility has not been completely understood. To correct this situation, the term "indoor housing facility" has been reworded to spell out the requirements that must be met in order to be classified as such a facility. The term "outdoor housing facility" has also been reworded to define this type of facility. Outdoor housing facilities would be restricted to: (1) Outside pens or runs with dog houses; (2) outside pens or paddocks with enclosed or partly enclosed sheds or shelters; or (3) animals maintained on a tether with a shed or dog house available. In addition

a third type of animal housing facility, "sheltered housing facility," has heen added to the definitions and will be added to the standards in Part 3. A "sheltered housing facility" will have requirements that will fall between those of an "indoor housing facility" and an "outdoor housing facility." The inside or sheltered part of the facility should be able to maintain temperatures above 35° F (1.7° C); must provide additional ventilation, such as fans, when temperatures in the sheltered area exceed 95° F (35° C); and the shelter part must be available to the animals at all times. This type of facility would include runs or pens in a totally enclosed barn or building or connecting inside/outside runs or pens with the inside pens in a totally enclosed building. This definition is intended to assist the public in understanding how an animal housing facility should be classified.

The term "intermediate handler" has been revised. The new definition is not intended to include any person who transports or arranges for transportation of animals solely for the purposes of: (1) Purebred breeding, (2) dog and cat shows, (3) boarding not in association with transport in commerce, (4) grooming, or (5) veterinary care. All other aspects of transportation are regulated.

The veterinary care standards and acceptable husbandry practices for marine mammals require isolation of new or sick animals from resident animals; however, isolation was not defined in the regulations or standards. The term "isolation" has, therefore, been added to the definitions in regard to marine mammals.

The term "licensed veterinarian" has been reworded so as to include the requirement that the veterinarian must be licensed in a State and has received formal training.

The 1985 amendments restrict the number of times that an animal may be used for survival surgery in major operative experiments. In order to effect this requirement, the term "major operative experiment" has been added to the definitions.

The 1985 amendments to the Act require that steps be taken to reduce or eliminate the use of painful procedures in research animals. In the next to last paragraph of the "Joint Explanatory Statement of the Committee of Conference," as published in the House Congressional Record on December 17, 1985, the conferees indicated that their intent was to reduce or eliminate pain other than slight or momentary pain, such as that caused by injections or other minor procedures. The 1985 amendments to the Act reflect Congressional concern with the infliction of pain and the use of painful procedures on laboratory animals. They require that research facility personnel seriously review painful procedures to determine if they are necessary to obtain the scientific objective. Accordingly, the term "painful procedure" has been added to the list of definitions.

APHIS is defining the term "pet animal" as animals which have normally been kept by households in the United States as family pets and are considered to be easily handled and relatively nondangerous. Pet stores which sell any animal not deemed to be a "pet animal" must obtain a dealer's license.

Over the years there has been some disagreement over what constitutes the term "primary enclosure." This term has been reworded and includes some examples.

The term "protocol" has been defined as the investigator's plan for the use of animals in the context of the investigator's research. The 1985 amendments provide for exceptions to the regulations and standards if such exceptions are justified in the protocol and approved by the Committee. The 1985 amendments to the Act require research facilities to establish Institutional Animal Care and Use Committees and set certain responsibilities and duties for the committees. The amendments state that a quorum is required for all formal actions of the committee and define "quorum" as "a majority of committee members." The term "quorum" is, therefore, added to the list of definitions as defined in the amendments.

The term "random source" has been added to the definitions to differentiate dogs and cats obtained from pounds, shelters, and persons who did not breed and raise them, from dogs and cats bred specifically for use in research facilities and those that are obtained from a known legal source. This definition is intended to facilitate enforcement of the Act against dealers and research facilities unlawfully buying or selling such animals. The term "random source" is, therefore, defined and added to the list of definitions.

The term "research facility" has been reworded to clarify the structure and meaning of the paragraph and the permitted exemption from registration. The use of animals for teaching has also been included in the definitions to clarify the intent of Congress that animals used for teaching purposes are regulated under the Act as are those used for testing, experiments, or research. The committee hearings for the original Laboratory Animal Welfare Act in 1966 (Pub L. 89-544) and the amendments in 1970 (Pub. L. 91-579) specifically indicated that animals used for teaching were to be included under the term research. The term "teaching" was never made part of the definition of a research facility but the intent has been carried out in program enforcement. This has caused some confusion over the years which would be corrected by this new definition.

The Animal Welfare Act, as amended, (7 U.S.C. 2131 *et seq.*) provides for certain exemptions for a "retail pet store" under the definitions of a dealer and an exhibitor. The term "retail pet store" has been revised to clarify the circumstances under which such a store must obtain a license. Any retail pet store selling or exhibiting any animal(s) other than those listed as a "pet animal" would require a license as a class "B" dealer or a class "C" exhibitor.

The term "transporting vehicle" has been added to the definitions in regard to the transportation of animals. Although the term "primary conveyance" means basically the same thing, the term "transporting vehicle" has been added to assist the public in understanding the regulations.

The term "wild animal" has been added, along with the term "exotic animal," to define better those animals regulated under the Act. The habitat for some animals in the wild state is rapidly diminishing and many of these animals are more readily found in captivity than in nature. These definitions are an effort to adapt to changing circumstances and to clarify the types of animals included under each definition.

The Act specifies, under the definition of "exhibitor," that carnivals, circuses, and zoos exhibiting animals must be licensed whether operated for profit or not. The term "zoo" has been added to the list of definitions. This definition is broad in scope and is intended to include any stationary or semistationary display of animals to the public regardless of compensation.

Comments

Written comments are solicited for 60 days after publication of this document in the **Federal Register** and should refer to Docket number 84-027.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined not to be a "major rule." Based on information available to the Department, it has been determined that this proposal would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; and would not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Alternatives were considered with respect to this proposal.

Consideration was given to add only the definitions mandated by the amendments to the Animal Welfare Act as indicated in Pub. L. 99–198, the "Food Security Act of 1985." It was determined that new definitions should be added and existing definitions reworded and revised, so as to assist the public in understanding the requirements of the regulations and standards.

It is not anticipated that the adoption of the proposed changes would have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Many of the proposed changes would ease the burden and lessen the impact of regulation on all small entities within the regulated industry.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

Accordingly, we propose to amend 9 CFR as follows:

Part 1 is revised to read as follows:

PART 1—DEFINITION OF TERMS

Authority: 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

Act means the Act of August 24, 1966 (Pub. L. 89–544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91–579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94–279), (the Animal Welfare Act Amendments of 1976), and the Act of December 23, 1985 (Pub. L. 99–198), (the Food Security Act of 1985), and as it may be subsequently amended.

Administrator means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

Ambient temperature means the air temperature surrounding the animal.

Animal means any live or dead dog, cat, monkey (nonhuman primate), guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats, and mice and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

Animal act means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

Area Veterinarian in Charge means a veterinarian or his designee employed by APHIS, Veterinary Services, who is assigned by the Deputy Administrator to supervise and perform the official work of Veterinary Services in a given State or States. As used in Part 2 of this subchapter, the Area Veterinarian in Charge shall be deemed to be the person in charge of the official work of Veterinary Services in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

Attending veterinarian means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated responsibility for activities involving animals at a registered or licensed facility. The veterinarian must be accredited by the U.S. Department of Agriculture in accordance with regulations issued under the Animal Welfare Act.

Business hours means the hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year.

Business year means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

Carrier means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

Cat means any live or dead cat (Felis catus) or any cat-hybrid cross.

Class "A" licensee (breeder) means a person subject to the licensing requirements under Part 2 whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

Class "B" licensee (dealer) means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1(q)) and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators at an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

Class "C" licensee (exhibitor) means a person subject to the licensing requirements under Part 2 and fitting the definition of an "exhibitor" (§ 1.1(x)) whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

Commerce means trade, traffic, transportation, or other commerce—

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

Committee means the Institutional Animal Care and Use Committee established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the committee. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Veterinary Services or any other official of Veterinary Services to whom authority has been delegated to act in his stead.

Dog means any live or dead dog (Canis familiaris) or any dog-hybrid cross.

Dwarf hamster means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

Endangered species means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.* and as it may be subsequently amended).

Euthanasia means the humane destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death.

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

Exotic animal means any animal that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, llamas, antelope, anteaters, kangaroos, and water buffalo. Species of foreign domestic cattle, such as, Ankole, Gayal, Yak are included in this group.

Farm animal means any domestic species of cattle, sheep, swine, goats, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work or pack animals.

Federal agency means an Executive agency as such term is defined in section 105 of Title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing involving the use of animals.

Federal award means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing, involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

Federal research facility means each department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

Handling means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

Housing facility means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

Hybrid cross means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

Impervious surface means a surface that does not permit the absorption of fluids. Fluids on such surfaces will bead or run off, and such surfaces will allow thorough and repeated cleaning and disinfecting, and will not retain odors.

Indoor housing facility means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered

with a transparent material such as glass or hard plastic).

Intermediate handler means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

Isolation in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

Licensed veterinarian means a Doctor of Veterinary Medicine who has graduated from an accredited school of veterinary medicine and who has a valid license to practice veterinary medicine in some State.

Licensee means any person licensed according to the provisions of the Act and the regulations in Part 2 of this subchapter.

Major operative experiment means any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability.

Minimum horizontal dimension (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Nonconditioned animals means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

Nonhuman primate means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

Operator of an auction sale means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

Outdoor housing facility means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits.

Painful procedure as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

Person means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

Pet animal means any animal that has commonly been kept as a pet animal in family households in the United States.

Primary conveyance means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or chain. In the case of animals restrained by a chain (e.g., dogs on chains), it includes the shelter and the area within reach of the chain.

Protocol means an investigator's plan for the use of animals in a study of a biomedical problem.

Quorum means a majority of the Committee members.

Random source means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on their premises.

Registrant means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

Research facility means any school (except an elementary or secondary school), institution, organization, or person who uses or intends to use live animals in research, tests, experiments, or teaching, and that: Purchases or transports live animals in commerce, or receives funds under a grant, award, loan, or contract from a Department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, experiments, or teaching. A school, institution, organization, or person who does not use or intend to use live dogs or cats may be exempted by the Administrator, upon application to him in specific cases and upon his determination that such exemption does not vitiate the purpose of the Act. The Administrator will not exempt any school, institution, organization, or person who, in the opinion of the Administrator, uses substantial numbers of live animals where the principal function of such school, institution, organization, or person, is biomedical research, testing, or teaching.

Retail pet store means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gopher, mink, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security or breeding purposes;

(2) Establishments or persons selling or offering to sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as, skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

Sanitize means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

Secretary means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

Sheltered housing facility means a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

Standards means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors, research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in Part 3 of this subchapter.

State means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

Transporting device means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

Transporting vehicle means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

Veterinary Services means the office of the Animal and Plant Health Inspection Service to which responsibility is assigned for the performance of functions under the Act.

Veterinary Services representative means any inspector or other person employed by the Department who is

responsible for the performance of a function under the Act.

Weaned means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

Wild animal means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to, animals such as: Buffalo, deer, skunk, opossum, raccoon, armadillo, coyote, squirrel, fox, wolf.

Wild state means living in its original, natural condition; not domesticated.

Zoo means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done at Washington, DC, this 24th day of March, 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 87-6832 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 2

[Docket No. 84-010]

Animal Welfare Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Part 2—"Regulations" to comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) ("ACT") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. This document also proposes to amend, revise, and expand the regulations in order to update the regulations and standards based on our experience enforcing the Act and the regulations and standards. We have added new sections on (1) Institutional Animal Care and Use Committees; (2) Attending Veterinarians and Veterinary Care; (3) Holding Facilities; and (4) Handling to comply with the requirements of the 1985 amendments to the Act. These requirements will apply to all regulated animals and thus obviate the need to repeat them in each section of Part 3. Other sections in the regulations have been revised in content and/or format so as to aid the public in better understanding and using the regulations for the humane care, treatment, handling, and transportation of regulated animals.

DATE: Written comments must be received on or before June 1, 1987.

ADDRESS: Written comments concerning this proposal should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they respond to Docket Number 86-010. Written comments received may be inspected at Room 756 of the Federal Building between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend, revise, and expand the "Regulations" contained in 9 CFR 2.1 through 2.132. These regulations pertain to the licensing and registration of facilities; the recordkeeping and identification of animals; holding periods and facilities; inspections; Institutional Animal Care and Use Committees; Adequate Veterinary Care; and other areas relating to the humane care, handling, treatment, and transportation of animals. These changes are promulgated under the authority of the Animal Welfare Act, as amended (7 U.S.C 2131 *et seq.*) including some specific new requirements mandated by the 1985 amendments to the Act. The Act requires the Department to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. Such standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, recordkeeping, and other matters specified in section 13 of the Act (7 U.S.C. 2143) as amended.

These proposed regulations contain a general rewriting and reorganization of the current regulations based on our experience in enforcing the Act. These proposed regulations also contain the regulations required by the 1985 amendments to the Act, including regulations setting forth the responsibilities of the Institutional Animal Care and Use Committee; requirements for Committee approval of research protocols; training by research facilities; use of pain relieving drugs; and inspection of animal use areas by the Committee.

Licensing

Section 2.1 sets forth the requirements and application procedure for licensing under the Act. To be licensed, dealers and exhibitors must agree to abide by the regulations and standards. A licensee's failure to comply with these requirements may subject him to civil penalties and a license suspension or revocation following formal legal proceedings. The Department, therefore, proposes to require licensees to be at least 18 years of age to avoid any problems that might arise in attempting to enforce the Act against a minor.

The Department proposes that applicants and licensees must provide a valid mailing address through which they can be reached at all times, and a valid premise's address where animals, animal facilities, equipment, and records can be inspected for compliance with the regulations and standards. In the past, many licensees have failed to provide an accurate and current address for contact and inspections. This has resulted in automatic termination of their license as they could not be contacted at renewal time. This change is intended to facilitate enforcement and to prevent the situation of someone "unknowingly" operating without a license. As before, if an applicant or licensee operates in more than one State, they must apply for a license in the State in which they have their principal place of business. Additionally, all premises or sites where such person operates or keeps animals must be indicated on the application form. The Department also proposes to increase the application fee from $5 to $10.

Sections 2 and 3 of the Act allow for certain exemptions from licensing. This proposal sets forth those persons exempted from licensing and defines the criteria a dealer must meet to be exempt from licensing. In previous years, the Department licensed animal auction sales where dogs or cats were sold but did not license auction sales that sold animals other than dogs or cats. The 1976 amendments to the Act changed the definition of a "dealer" to include those persons who negotiate the purchase or sale of animals in commerce. This definition includes brokers and operators of auction sales as dealers under the Act. Although such persons do not usually take physical possession of the animals and do not usually have holding facilities for animals, they are required to keep records and comply with the regulations and standards. The effect of this change in the definition of a dealer has not

previously been incorporated into the regulations. The Department is, therefore, proposing that all brokers, and all operators of auction sales, where regulated animals are sold, or purchased, must be licensed as class "B" dealers.

A number of States and local communities have passed laws which restrict or prohibit the ownership of certain animals, such as wild or exotic animals, that are considered dangerous. Some of these laws made allowances for people who had a USDA license as an exhibitor or a dealer. Department regulations currently allow for voluntary licenses to be issued to persons who desire them and that comply with the standards and regulations. This voluntary license procedure has the potential to allow some individuals to escape or circumvent local or State laws prohibiting or regulating the keeping of such animals, and has added considerable burden to the Department's expenditures of manpower and money by requiring licensing and inspection of individuals who do not otherwise qualify as dealers or exhibitors under the Act. Therefore, the Department proposes to eliminate voluntary licenses, except as intended by Congress, i.e., for those persons who sell dogs or cats for research and do not qualify for licensing. Furthermore, no one may obtain more than one license and only those persons meeting the definition of a dealer or an exhibitor will be licensed, subject to the above exemption.

Sections 2.2 and 2.3 require that applicants acknowledge the receipt of the regulations and standards, and that they demonstrate compliance with such regulations and standards before a license will be issued. The applicant must make his premises, equipment, and records available for inspection during business hours, as defined each week of the year. If an applicant does not pass a prelicense inspection, a license will be denied until the facilities are in full compliance with the regulations and standards.

The present § 2.4 "Issuance of License," has been incorporated into §§ 2.1 and 2.6 and will be deleted as a separate section. Section 2.5 has been revised to cover duration and termination of licenses. As before, a license will be valid for 1 year unless terminated before the anniversary date. The reasons for termination are set forth in § 2.5. The provision that license and application fees are not refundable if the license is terminated before its expiration date has now been added to § 2.5.

Difficulties have occurred in the past where licensees either refused to accept delivery of registered or certified mail concerning their license renewal, or such mail was undeliverable. This has resulted in the expenditure of considerable time and effort to locate the licensee before their license was terminated. The Department proposes to require that licensees must accept registered or certified mail delivery at the valid address required in § 2.1 or have their license automatically terminate.

Licensees that move to another location or State, or enlarge their animal business into another location without notification to the Area Veterinarian in Charge have also been an ongoing enforcement problem. Such premises are quite often the subject of legal action for noncompliance with standards even though the original premise was in compliance. In order to correct this problem and to assist licensees in complying with the standards, the Department is proposing that licenses will be issued to persons for specific premises and will not be transferable upon change of location or ownership without notice to the Area Veterinarian in Charge and a satisfactory compliance inspection. Licensees who operate without giving the Area Veterinarian in Charge proper notice and without passing an inspection will be deemed to be operating without a license at that site.

The annual license fees indicated in § 2.6 have not changed in over 10 years for dealers and exhibitors despite considerable inflation. Although many licensees have gone out of business, new ones have entered so that the number of licensees has remained relatively constant over the past 10 to 15 years. The Department is proposing to increase the annual license fees in addition to the application fee. The Department proposes to increase the minimum annual license fee for dealers from $5 to $50 and the maximum fee from $500 to $1,000. For exhibitors, the Department proposes to increase the minimum fee from $5 to $50 and the maximum fee from $100 to $500. No changes have been made in the manner in which such fees are calculated for "A" dealers and "B" dealers. Brokers and operators of auction sales will be licensed as class "B" dealers.

The regulations presently allow persons applying for a license, or license renewal, to pay their fees by certified check, cashier's check, money order, or by personal check. The National Finance Center has advised APHIS that they have a continuing problem with a number of personal checks being returned for nonsufficient funds. Such returned checks are usually in the range of $25 or less, and create a considerable burden both in bookkeeping procedures and personnel time spent in trying to collect such fees. The returned checks also place the applicant or licensee in the position of doing business without a license, as no one is considered licensed until they have satisfied all the requirements indicated in Part 2, which includes the payment of the appropriate fees. Serious consideration was given to eliminating personal checks for payment of fees. We felt that such a restriction would not be fair to the majority of applicants and licensees whose checks are not returned for insufficient funds. The Department will, therefore, retain the option of paying fees by personal check but is proposing that a penalty fee of $15 be charged for each returned check. Additionally, the Department proposes that no license be issued until the check has cleared normal banking procedures, and that once a check has been returned all subsequent fees paid by that person must be by certified check, cashier's check, or money order. If a person meets the requirements for more than one type of license he will be licensed, and required to pay the fee, for his predominant business.

Section 2.7, Annual report by licensees, has been reorganized in format, but retains basically the same requirments as before with two exceptions. Over the past several years, animal leasing operations have become more common. The Department, therefore, proposes that licensees must include any leased animals, along with animals which they own, when calculating their yearly fees. This will apply to both the lessor and the lessee, as both persons may receive compensation attributable to the same animal.

Problems have also been apparent for many years in the area of adequate veterinary care. Some licensees do not provide adequate veterinary care as required by the Act and the regulations and standards. Some change veterinarians every few months and others pick a veterinarian's name out of the telephone book and indicate that he or she is providing the care without consulting the veterinarian named. In order to correct this problem, the Department proposes that each licensee have his attending veterinarian sign a statement on the annual report which certifies that the veterinarian has read and understands the regulations and standards under the Act and that he or she actually visits the licensees'

premises in order to carry out the required programs of adequate veterinary care. The Department further proposes in a new § 2.40, that each licensed or registered dealer, exhibitor, or research facility must have an attending veterinarian and must submit a written program of adequate veterinary care to the Area Veterinarian in Charge on a yearly basis. This requirement is discussed in detail in the section on the attending veterinarian.

Section 2.8, has been slightly revised in wording but is basically the same as before. The Department proposes in § 2.8 that licensees and registrants must notify the Area Veterinarian in Charge of any change in name, address, management, ownership, or other material fact by certified mail.

Section 2.10, Licensees whose licenses have been suspended or revoked, has been revised in both format and content to make it stronger and more effective. The Department proposes removing references to termination of licenses from this section and including them in § 2.5. The Department proposes that license revocations be permanent.

Section 2.11, Denial of license, has been revised in both format and content. As before, no one will be licensed who has not made proper application, paid the appropriate fees, and demonstrated compliance with the regulations and standards. Due to past enforcement problems with some licensees, the Department proposes to add three other additional bases for denying a license. The first would be to deny a license to any person who has been fined, sentenced to jail, or pleaded nolo contendere (no contest) under local or State cruelty to animal laws within 1 year of application for license. Second, a license would be denied to any person who has made any false or fraudulent statements, or provided any false or fraudulent records to the Department. Third, a license would be denied to any person who has interfered with, threatened, abused, or harassed any Veterinary Services inspector in the course of carrying out his or her duties under the Act. This would include verbal abuse as well as physical abuse. Any applicant denied a license would have the right to request a hearing to show why the license should not be denied, but such license denial would remain in effect until the final legal decision has been rendered. After a 1-year period any person who was denied a license could again apply for a license.

Registration

All research facilities, carriers, and intermediate handlers must register under the Act. Since the Act was first passed in 1966, registration has been on a one time only basis, whereas licensing is on a yearly basis. This system has created some recordkeeping and enforcement problems. In the 20 years since the Act was first passed, there has been considerable turnover of executive personnel at most research facilities as well as many changes in their operations and structure, so that the original registration forms are no longer current or accurate. Intermediate handlers and carriers have been registered since the amendments of 1976 and there have been similar problems with these facilities. The Department proposes, therefore, that registrants must update their registration every 3 years. This 3-year time period will correspond with other Federal recordkeeping requirements and will keep information current for each registrant without requiring yearly registration. Section 2.25(a) has been revised to require that each research facility, carrier, intermediate handler, and each exhibitor not required to be licensed under section 3 of the Act shall complete and file a registration form every 3 years. Such registration form is to be signed by the Chief Executive Officer (CEO) or some other official who has the legal authority to bind the parent organization. Registration is to be completed at a level sufficiently elevated to bind the institution, which usually means the University or college level of a research facility rather than the school, or department level. For corporations, a subsidiary will be registered unless the subsidiary is under direct control of the parent corporation, as determined by the Secretary.

Section 2.27 deals with Notification of Change of Operation. The Department proposes that registrants notify the Area Veterinarian in Charge, by certified mail, of any change in address, operations or management. Lack of such notification in the past has resulted in inaccurate records and a waste of time and money when such facilities have gone out of business or changed operations. The Department also proposes to establish a procedure whereby a registrant can be placed in an inactive status, after a period of 2 years, during which no animals have been used, handled, or transported, and to establish a procedure to cancel the registration of a registrant which ceases to operate as a research facility, carrier, intermediate handler, or exhibitor, or that goes out of business. When a registrant goes out of business, or becomes inactive, it must notify the Area Veterinarian in Charge in writing and is responsible for reregistration and compliance with the regulations and standards should it become active again.

Section 2.28, Annual report of research facilities, has been revised so as to incorporate the requirements of the 1985 amendments to the Act. The Department proposes that the annual report be certified by (1) the attending veterinarian, (2) the chairman of the Institutional Animal Care and Use Committee, (3) the Chief Executive Officer of the facility. Present regulations require certification by the attending veterinarian or by the Committee, and by a legally responsible official. The report will include a statement that the unaffiliated member concurs or does not concur with the report.

The word "teaching" has been included in the definition of a research facility as it was the intent of Congress in the original Act of 1966 to include "teaching" as part of research. This was carried out in practice, but the term was never placed into the regulations.

The Department further proposes that the annual report of a research facility must show the following: (1) That professionally acceptable standards governing the care, treatment, and use of animals, including the use of appropriate drugs, are used during pre- and post-surgical care and during actual research; (2) assurances that the principal investigator has considered alternatives to such painful or distressful procedures; (3) that the facility is adhering to the standards and regulations under the Act, and an explanation for any deviation from such standards and regulations as an attachment to the report; (4) the location of all facilities where animals were used or kept by the facility; (5) the common names and numbers for all animals: (i) Being bred or held for use but not yet used, (ii) used for purposes involving no pain or distress, (iii) used for purposes which involve pain or distress and received pain relieving drugs, (iv) used for purposes involving pain or distress and did not receive pain relieving drugs. In this latter case, the facility shall attach to the annual report information on the procedures producing pain or distress in these animals, including a detailed explanation why pain relieving drugs were not used. The Department also proposes that the Chief Executive Officer must certify that the attending veterinarian and the Institutional Animal Care and Use Committee have the authority to enter any animal area at any reasonable time and that they have satisfactorily carried out their responsibilities under the Act. In addition such annual report would have

to be certified by the attending veterinarian and the Committee chairman. The annual report would be submitted on or before December 1 of each calendar year by each research facility.

Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

The 1985 amendments to the Act require that the Department promulgate standards for research facilities to ensure that animal pain and distress are minimized and to restrict the multiple use of animals in major operative experiments. In addition, each research facility is required to establish an Institutional Animal Care and Use Committee. The Department is, therefore, proposing a new § 2.30, Additional Requirements for Research Facilities, which implements these requirements. Each research facility would be required to establish a written policy ensuring that it will fulfill its statutory responsibilities with respect to the use of animals in practices that could cause pain or distress to the animals.

Present regulations refer to an institutional committee of at least three members, one of whom is a Doctor of Veterinary Medicine, for evaluating the care, treatment, and use of all warmblooded animals held or used for research, teaching, testing, or experimentation and for certifying that the type and amount of certain drugs used on animals during actual research, teaching, testing, or experimentation was appropriate to relieve pain and distress in the animals. Additionally, the Annual Report of Research Facility (VS Form 18–23) required to be submitted yearly by each research facility currently must be signed by the attending veterinarian or by a member of the Animal Care Committee.

The general public and the research community have all indicated that the evaluation, oversight, and review of the care and treatment of animals used for research is the proper responsibility of such a committee due to the other workload and responsibilities of the attending veterinarian. It is also felt that the committee should be responsible for approving research protocols utilizing animals falling under Categories 3 and 4 of § 2.35(b)(3)(ii) and should also be responsible for inspecting the animal facilities in order to certify compliance with the Act.

The 1985 amendments to the Act require the establishment of an Institutional Animal Care and Use Committee and provide definite requirements with regard to the establishment, composition, and duties of the Committee. Past and present enforcement efforts and the requirements of the 1985 amendments have convinced the Department that stronger requirements and more specific responsibilities are required for such Committees so as to ensure the humane care and treatment of animals used for research purposes. The Department is, therefore, proposing a new § 2.35, Institutional Animal Care and Use Committee, setting forth the requirements for, and the composition of, such Committee, and indicating the duties and responsibilities of the Committee. The registered research facility will be responsible for providing both an attending veterinarian and an Animal Care and Use Committee and for ensuring that they have the necessary authority to carry out their functions and responsibilities as required by the 1985 amendments and by the regulations and standards.

Section 2.35 Institutional Animal Care and Use Committee (Committee).

The Department proposes that each research facility must establish and maintain at least one Committee. The Committee shall consist of at least three persons; the chairman, the attending veterinarian of the research facility, and an outside member who is not affiliated in any way with the research facility other than as a member of the Committee. The outside member should not be a member of the family of any one connected with the research facility, nor should he or she be a former employee or member of the facility, or a supplier or vendor to the facility. All Committee members should possess sufficient ability to assess animal care, treatment, and practices, and the outside member is intended to provide general representation of the community for the proper care and treatment of animals at the facility. If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of the facility. The members of the Committee are to be appointed by the Chief Executive Officer of the research facility. In the case of universities, the Department intends that this be the President or his designee (who shall not be in the Department which is conducting the research). The Department proposes that the research facility maintain an up-to-date list of Committee members, indicating the name, degree, position, qualifications, address, and telephone number of each member. A copy of the current list is to be maintained by the attending veterinarian.

Section 13(b)(2) of the 1985 amendments to the Act requires that, "A quorum shall be required for all formal actions of the Committee, including inspections under paragraph (3)." The amendments define "Quorum" as "a majority of the Committee members." The amendments then specify in 13(b)(2) that the Committee shall inspect all animal study areas and animal facilities at least semiannually, shall review certain areas as part of the inspections, and shall file certain reports and take certain actions in regard to any deficiencies noted. The Department invites comments in regard to the Committee's inspection of animal facilities and study areas and how such inspections might be carried out in facilities with large Committees and a large number of animal sites. The Department is proposing that the Committee inspect all animal sites and study areas at least twice a year, no more than 6 months apart, and that the Committee, in its inspection, review all practices and procedures involving pain to the animals, and the condition of all animals, so as to minimize pain and distress to the animals. The Regulations and Standards issued under the Act (9 CFR, Subchapter A) are to be used as the basis for the inspection of animal areas and facilities. The 1985 amendments to the Act provide for exceptions to the inspection requirement when animals are studied in their natural environment and the study area prohibits easy access. Rather than providing for a blanket exemption for such studies, the Department proposes that requests for such exemptions be addressed to the Deputy Administrator, and the reasons why inspections cannot be made in these instances be clearly set forth in the request. A decision shall then be given as to whether such study area will be exempted from the Committee inspection process.

The 1985 amendments to the Act require that after the Committee makes its inspection, it shall file a certification report on its findings. The Department proposes that such report be filed at a central location at the research facility and that the reports shall be available to APHIS officials and to officials of any funding Federal agencies for inspection and copying, and shall be retained for at least 3 years by the facility. The report is to include: The date the inspection was made; the signature of a majority of the Committee members; any minority views; reports of any violations or deficiencies of the regulations and standards; any deviations from approved research protocols that adversely affect the animals; any

notification to the facility concerning such deviations or conditions; any other information or concerns of the Committee on the status or conditions of the animals or the facility; and any corrections made by the facility. The Committee is to provide an assurance statement that as part of its inspection all painful procedures using animals have been reviewed and approved as required in section 2.35 and found to be in accordance with the approved protocols and procedures, and if not in accordance with approved protocols and procedures, that the investigator has been instructed to cease such activities and to comply with approved procedures.

The 1985 amendments to the Act require that the Committee notify the administrative representative of the research facility of any deviations from the provisions of the Act, regulations, or standards found on inspection and that the facility be given an opportunity to correct such problems. The Department is proposing that if, 30 days after such notification and opportunity for correction, such deficiencies or deviations remain uncorrected, that the Committee shall notify the Deputy Administrator and any funding Federal agency, in writing. Copies of such reports and notification shall be provided to Veterinary Services inspectors and any funding agency.

The 1985 amendments also require the establishment of a reporting procedure whereby laboratory or research facility personnel can report deficiencies, deviations, or questionable practices concerning animal housing, care, or use, without fear of reprisal. The Department is proposing that the research facility establish such a reporting procedure and that Committee responsibilities include the review and, if warranted, investigation of all such reports involving the care and use of animals at the facility. The research facility is to prepare a report including the nature of the concern, the Committee's findings, and any action taken. This report will be made available to Veterinary Services inspectors and funding Federal agency officials upon request. The regulations are very clear that no individual in the employ of the research facility is to be subject to any reprisal or discrimination for reporting any problems.

In accordance with the 1985 amendments, the Department proposes that the research facility, through the Committee, make all research protocols involving animals and all assurance statements required by the U.S. Public Health Service (PHS) available to USDA inspectors upon the request of the Deputy Administrator. Such inspection would be to review for compliance with the provisions of the Act, including compliance with requirements that assurances be made, and to confirm that areas of noncompliance with the standards are fully justified in the research protocol and approved by the Committee. Areas of noncompliance which are not justified in the research protocol and approved by the Committee will be documented for additional action. The USDA inspector shall maintain the confidentiality of all research protocols and assurances.

Additionally, the Department proposes that Committee approval shall be required for all research, testing, or teaching protocols falling under Categories 3 and 4 of § 2.35(b)(3)(ii) involving the use of live warmblooded animals at the facility, or other locations by facility personnel, before such research, testing, or teaching is started. The Department invites comments with regard to the approval of such protocols. The Department proposes that Categories of Animal Use in Research and Teaching be incorporated into regulations. These categories are listed by the increasing amount of pain or distress likely to be caused to the animals and examples are given for each category. These categories are for the guidance of the investigator in planning the research protocol and for the Committee in determining the level of pain or distress to be allowed and the necessity of such pain or distress when approving the protocol. In approving protocols and procedures falling into the area of Categories 3 and 4, the Committee shall ensure that all possible steps have been taken to reduce or eliminate as much pain and distress as possible, and that the proper level of animal care and treatment has been planned for and carried out using acceptable practices and methods. The list of examples is not all inclusive but is provided as guidance for where a particular protocol might be classified in relation to the pain or distress involved. Those protocols or procedures which do not adequately protect the animals from pain or distress should not be approved by the Committee unless written justification, with objective substantiating documentation, is provided and the Committee agrees that such procedures are scientifically necessary.

Protocol approval by the Committee has a number of important functions and areas of consideration. Prior to approving protocols, the Committee shall: (1) Ensure that animal pain, distress, and functional or sensory impairment are minimized; (2) ensure that all survival surgery is performed using aseptic procedures; (3) ensure that adequate veterinary care is planned for and provided; (4) ensure that the type and number of animals are appropriate and necessary as an essential part of the protocol or to preserve an endangered species or marine mammals; (5) ensure the appropriate use of anesthetics, analgesics, tranquilizers, or euthanasia when necessary, and that such use is in accordance with established or accepted veterinary procedures and usage. The use of such drugs is expected to be in accordance with the instructions of the attending veterinarian.

The Department proposes that the basic guideline for the use of pain relieving drugs shall be that pain relieving drugs shall be used whenever an animal is subjected to any procedure that would reasonably be expected to cause pain or distress in a human being. Exceptions to the use of pain relieving drugs may be made if fully explained and justified in the research protocol and approved by the Committee.

Before approving any protocol, the Committee is to require: (1) Written assurance from the principal investigator that alternative procedures have been considered, and (2) assurance that the experiment is not unnecessarily duplicative. In any procedure which could be expected to cause pain or distress, the Committee must: (1) Require that the principal investigator consult with the attending veterinarian in the planning of such procedure and during the procedure; (2) require that the principal investigator provide for the use of pain relieving drugs in accordance with the attending veterinarian's recommendations and established or accepted veterinary procedures, including the training of laboratory personnel in the proper methods and techniques for minimizing pain and distress; (3) require that the principal investigator provide for pre- and post-surgical care by laboratory personnel and for any training that might be needed to carry out such care; (4) require that all aseptic surgery be conducted only in facilities intended for that purpose and that such facilities are operated and maintained under aseptic conditions, and that surgery be performed or directly supervised by trained and experienced personnel. The Committee shall not approve protocols which permit the withholding of pain relieving drugs or euthanasia except when scientifically necessary and then only for the shortest necessary period of time, nor protocols allowing the use of paralytic drugs without anesthesia.

The Department further proposes that in approving research protocols, the Committee shall ensure that no animal is used in more than one major operative experiment from which it is allowed to recover, unless such use: (1) Is scientifically necessary; (2) is required by protocol or other surgical procedures in the protocol; (3) is required to reduce the number of endangered species used; (4) is required to protect the health or well-being of the animal as determined by the attending veterinarian, or (5) involves a routine, elective veterinary surgical or diagnostic procedure. Other special circumstances will be determined by the Secretary on an individual basis. Written requests and supporting data should be sent to the Deputy Administrator, APHIS, for situations not covered above. The Department wishes to stress to the research facilities, and to the Committee, that cost savings alone is not adequate reason to justify multiple survival major surgical procedures on animals.

The law allows for exceptions to compliance with the standards, and prohibits the Secretary from directly interfering with actual research methods and procedures. The Department, therefore, proposes that such exemptions for noncompliance shall be made only when the noncompliance is necessary for the accomplishment of the proposed research, and: (1) Are specified in the research protocol; (2) are explained in detail; and (3) are approved by the Committee. The principal investigator is to file a report with the Committee explaining the reasons for such noncompliance in detail, and a copy of this report is to be kept on file at the facility and available for inspection by USDA inspectors or officials of funding agencies.

The 1985 amendments to the Act require that persons subject to the Act, including research facilities, provide for the exercise of dogs and for a physical environment promoting the psychological well-being of nonhuman primates. The Department proposes that, for research facilities, programs to meet the Department's standards be developed and implemented through the Committee. The Committee shall also maintain a record system indicating that such procedures are being carried out.

The 1985 amendments do not require registration of Federal research facilities or inspection by USDA. The amendments do require that each Federal research facility must have an Institutional Animal Care and Use Committee. The Department proposes that Federal research facilities shall establish Institutional Animal Care and Use Committees as set forth in § 2.35 and that such Committees shall have the same composition, duties, and responsibilities required of nonfederal research facility committees with two exceptions: (1) The Committee will report all deficiencies or deviations to the head of the Federal agency conducting the research, instead of reporting such to APHIS, and (2) the head of the Federal agency conducting the research will be responsible for all corrective actions to be taken by the facility and will grant all exceptions to compliance with standards.

The 1985 amendments to the Act also require that research facilities provide training for scientists, animal technicians, and other laboratory personnel in the handling of regulated animals. The Department proposes that such training be provided through the Committee and the attending veterinarian and be as often as necessary. The Department also proposes that the Committee review, at least once a year, the status of training and the qualifications of researchers who use animals and identify those personnel who require such training. The training system or procedure is to be available for review by USDA inspectors and shall include instruction in at least the following areas: (1) Humane methods of animal maintenance and experimentation; (2) methods that will minimize or eliminate the use of animals, or limit animal pain or distress; (3) utilization of the information service at the National Agricultural Library; (4) how and to whom deficiencies in animal care and treatment can be reported; (5) instruction on the basic needs of each species of animal; (6) familiarization of researchers and laboratory personnel with the intent and requirements of the Animal Welfare Act and other Federal requirements; (7) how to handle and care properly for the various species of animals used by the facility; (8) proper pre- and post-surgical care of animals; (9) proper use of tranquilizers and pain relieving drugs in animals used by the facility; (10) acceptable aseptic surgical procedures and methods, and (11) any other training or procedures the Committee, or the Secretary, may feel is necessary.

The 1985 amendments specify and broaden the responsibilities and duties of the Committee, and the membership of the Committee. In order to carry out the intent of Congress in this regard, the Department proposes that the chairman of the Committee must sign an assurance statement on the annual report certifying that the Committee has carried out its responsibilities and that the facility is following the standards during actual research.

Attending Veterinarian and Adequate Veterinary Care

Since the Animal Welfare Act was originally passed in 1967, there has been a continual problem in regards to licensees and registrants providing adequate veterinary care to the animals covered under the Act. Some facilities have not provided required veterinary care and others have switched veterinarians every few months causing confusing situations that are difficult to trace.

Some facilities have indicated the names of veterinarians who had not even been contacted by the facility. Some veterinarians stated that their only contact was on an emergency basis or when animals were brought into their office.

Many other veterinarians had told APHIS that even though they had been contacted by the licensee or registrant they did not know what the Act requires attending veterinarians to do. Most of them indicated that they felt their efforts were a waste of time as their recommendations concerning the health care of the animals were ignored, and they had no authority to see that such recommendations were carried out.

Veterinarians at many research facilities indicated that often they did not have the authority to enter the animal facilities of certain Departments or investigators and thus could not certify what conditions might be at those animal sites. Many of these veterinarians also indicated that due to various local political or managerial systems, their jobs would be in serious jeopardy if they tried to force adequate veterinary care in certain instances or if they refused to certify that all was in compliance at the facility when they, in fact, had no such knowledge.

For these reasons, as well as the mandate of the 1985 amendments to the Act, the Department is proposing a new section, § 2.40 covering the attending veterinarian and adequate veterinary care.

These proposed regulations will require the facility to provide a written program of veterinary care to the Department and will set forth the responsibilities of the veterinarian in regard to the health care of the animals. It is also proposed that the attending veterinarian must be trained and/or experienced in the care and management of the species being attended and accredited by the

Department in accordance with regulations issued by the Secretary under the Animal Welfare Act. In the case of research facilities, more specific duties and responsibilities will be required and the facility will be required to provide the attending veterinarian with the authority to enter all animal sites at any time in order for the attending veterinarian to ascertain and certify the facility's compliance with the Act.

Additionally, at the present time, veterinary care requirements are located in each subpart of Part 3. This is duplicative and unwieldy as each subsection must be consulted for the veterinary requirements. A new section, § 2.40, Attending Veterinarian and Adequate Veterinary Care, is therefore being added to the regulations in Part 2 and will apply to all animals. This new section will simplify the location of veterinary requirements, will eliminate duplicative sections in Part 3, will correct problems of enforcement, and will include the requirements mandated by the 1985 amendments to the Animal Welfare Act.

The Department proposes that each licensed or registered research facility, dealer, or exhibitor shall have an attending veterinarian to care for the animals and to provide guidance and supervision in programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the health care of all animals on the premises of the dealer, exhibitor, or research facility. A written program of adequate veterinary care between the facility and the veterinarian will be drawn up and reviewed yearly and will include a schedule of visits if a part-time or consulting veterinarian is used. A copy of the written program will be on file at the facility and a copy will be provided to the Area Veterinarian in Charge with the license renewal or annual report. Dealers and exhibitors will not be licensed without such a written program, and research facilities will be cited for violations if they do not have a written program. Each animal is to be observed daily by the dealer, exhibitor, veterinarian, animal caretaker in charge, or someone under the direct supervision of such person and any animals needing care must be provided with such care.

In the case of research facilities, additional requirements are being proposed for the attending veterinarian. First, the attending veterinarian shall be a member of the Institutional Animal Care and Use Committee and shall have the authority to enter all animal rooms, sites, facilities, and animal use areas at any time. Second, the veterinarian is to provide consultation and guidance to principal investigators, and others, during protocol planning, and during actual research, whenever any procedure is likely to produce pain and distress. Such consultation and guidance shall include at least: (1) Assurance of the proper use of tranquilizers or pain relieving drugs; (2) provision for adequate pre-surgical and post-surgical care by laboratory workers; (3) agreement to the withholding of drugs or euthanasia when scientifically necessary and only for the necessary time; and (4) evaluation and approval of all animal surgical areas and the qualifications of personnel involved with animal surgery. Third, the veterinarian is to establish a record system and standard operating procedure to indicate and assure the proper use of drugs; and that proper pre- and post-surgical care are being carried out.

Additionally, the veterinarian will be required to sign a statement on the annual report certifying: (1) That he/she has the authority to enter all animal areas; (2) that he/she has carried out the requirements of § 2.40; and (3) that he/she has read and understands the regulations and standards in Parts 2 and 3.

Identification of Animals

Section 2.50 deals with the time and method of identification of animals and has been reorganized in format and content. Paragraph (a) pertains to class "A" dealers (breeders). As before, whenever live dogs or cats leave the premises, they must be identified by: (1) An official tag: or (2) an approved tattoo. Live puppies or kittens less than 16 weeks of age are to be identified by: (1) An official tag; (2) an approved tattoo; or (3) a plastic type collar which contains the information required by § 2.51. The present regulations do not specifically mention how the breeding stock on the premises are to be identified. An attempt was made to handle this problem by policy memorandum, but this has not received wide distribution or uniform enforcement, and the problem of identification of breeding stock remains. In order to correct this, the Department is proposing that all live dogs or cats on the premises must be identified by: (1) An accurate and distinctive description; (2) a tattoo marking; or (3) an official tag. Thus, if there are two or more animals of similar description, marking, and color, they will have to be identified by tags or tattoos. If the color, markings and description of an animal are distinctive enough to differentiate the animal from the others, then a description alone can be used.

Paragraph (b) pertains to class "B" dealers. Only one change was made in this paragraph. The present regulations allow for dogs or cats not purchased or acquired in a manner affecting commerce to be identified only when they leave the premises. In order to correct this situation, the Department will consider all dogs or cats obtained by a class "B" dealer to be obtained affecting commerce, and proposes that all dogs and cats must be identified by an official tag or tattoo, or by a plastic type collar if less than 16 weeks of age. The dealer may still use a tag that was on an animal when he acquired it to maintain the animals identity or may replace it with his own tag. Also, any cat which exhibits distress from the attachment of a collar and tag can still be kept in a cage with the tag affixed to the door, but no more than one untagged cat may be kept in a cage.

Paragraph (c) deals with class "C" licensees (exhibitors). Exhibitors have been separated from dealers in order to simplify the regulations. There is also usually much less turnover in dogs and cats with exhibitors than with dealers. Exhibitors may identify dogs or cats with tags or tattoos, or they may use the following alternative method: (1) Keep an official USDA sequentially numbered tag on the door at the animal's cage or run; (2) keep a record book containing the animal's number, a written description of the animal, the data required by § 2.75(a), and a clear photograph of each animal; and (3) keep a second, duplicate tag which is to accompany each dog or cat whenever it leaves the premises. This alternative was allowed at the request of exhibitors using animals for movie and television work. Their concern that tattoos could be picked up on cameras and that collars caused enough damage to the hair around the animals neck to be objectionable for filming was considered reasonable and the Agency therefore proposes the suggested alternative.

Paragraph (e) pertains to dogs and cats obtained by research facilities. This paragraph has been reorganized to indicate that all dogs and cats, regardless of where they were obtained, must be identified by a tag or tattoo. The research facility may use an official tag or tattoo that came on the animal to maintain identification in the records, or they may apply their own tag or tattoo for identification. The Department wishes to advise research facilities that the identification of dogs and cats in many facilities has been very lax and

haphazard. It is the intent of the Department to require proper identification on dogs and cats in research facilities at all times, and this will be strictly enforced.

Section 2.51 deals with the form of the official tag. At the request of several licensed dealers, a second type of tag is being proposed. The present regulations allow a circular tag not less than 1¼ inches in diameter and containing the dealer number, the animal number, and the letters "USDA". The Department proposes to allow also a flat, oblong, tag not less than 2 inches by ¾ inch which is riveted to an acceptable collar. This tag would also contain the information required on the circular tag. Certain dealers believe that such a tag will properly identify the dogs or cats without the possibility of becoming caught in the wire or other parts of the enclosure and would not be readily torn off or lost.

Since the regulations were first written in 1967, it has been prohibited to use any number more than once. Over that period, some dealers have sold a considerable number of animals, and the numbers on their tags are becoming quite large and difficult to place on the tag. In order to correct this situation, the Department is proposing to allow animal identification numbers to be repeated after 5 consecutive years have elapsed. It is possible that a small number of animals from the same dealer or at the same research facility could have the same numbers if kept for over 5 years. The number of such cases would be small however, and there would be at least 5 years difference in their ages, which would serve to differentiate such animals. We do not feel this would cause unresolvable problems with animal identification and are therefore proposing the 5-year limit.

Sections 2.52, 2.53, and 2.54 were not changed except to add the term "research facility," and to indicate the 5-year time period for repeating identification numbers. The wording in § 2.55 (a) and (d) has been rearranged and the 5-year limit on repeating numbers included. No other changes were made in this section.

Stolen Animals

In the past few years there have been several instances of dealers buying and selling obviously stolen animals and of a few research facilities obtaining animals under questionable circumstances. One of the major purposes of the Act is to protect the owners of animals from the theft of their animals, and to prevent the sale or use of animals which have been stolen. The Department is, therefore, proposing a new § 2.60 prohibiting the purchase, sale, use, or transportation of stolen animals.

Records

Section 2.75 deals with records for dealers and exhibitors. This section has been revised in both format and content. In addition to the information presently required to be maintained for all dogs and cats purchased or otherwise acquired, the Department proposes to require that the vehicle license number and State and the driver's license number and State also be recorded in the records. This proposal is being made due to several recent instances where unscrupulous dealers were deliberately obtaining dogs and cats either by fraudulent means or that were known to have been stolen. By requiring a vehicle license number and driver's license number, such individuals can be traced and the source of the animals better determined. Only editorial or format changes were made in the rest of § 2.75.

Section 2.76 deals with records for research facilities. This section has also been revised in content and format for easier reading. As with the records for dealers above, the Department proposes that when research facilities purchase or otherwise acquire a dog or cat that they also record the vehicle license number and State and the driver's license number and State of the person from whom the animal was obtained. Other changes in this section are editorial in nature.

Section 2.77 deals with records for operators of auction sales. This section has been revised in format. The term "broker" has been added to this section. A "broker" negotiates the sale of animals much like the operator of an auction sale; and may also arrange for their transportation. There are a growing number of "brokers" and auction sales in the country. Under the expanded definition of a "dealer" in the 1976 amendments to the Animal Welfare Act, both "brokers," and "operators of auction sales," are required to obtain licenses as dealers. This type of operator usually does not take possession of the animals nor have holding facilities for animals. Inspections of records must be made by APHIS inspectors, however, to determine the sources and destinations of such animals and whether any unlicensed dealers are involved in animal transactions. We have, therefore, included the term "broker" with the "operator of an auction sale" for recordkeeping purposes.

Section 2.79 deals with health certification and identification of dogs, cats, and nonhuman primates. This section has been revised in format for easier readability and the term "broker" has been added to paragraph (a). The Animal Welfare Act, in section 13(b), provides for an exemption from health certificates for research facilities. This exemption is not presently in the regulations and a new paragraph (b) is added to provide this exemption for research facilities when required. Other changes in this section are editorial in nature. In § 2.81 dealing with the disposition of records, the first sentence in paragraph (b) has been revised to indicate that records must be held for at least 1 year after an animal is euthanized or otherwise disposed.

Compliance With Standards and Holding Period

Section 2.100 deals with compliance with the standards in Part 3. This section has been revised to include the requirement to comply with the regulations in Part 2. Due to the 1985 amendments to the Act, a new section on Institutional Animal Care and Use Committees has been added to Part 2. Also, the requirements for adequate veterinary care and for the humane handling of animals have been moved from Part 3 to Part 2. It is therefore necessary to include the requirement for compliance with Part 2 in this section, and this is proposed. The proviso that nothing in the rules, regulations, or standards shall affect or interfere with the design, outlines, guidelines, or performances of actual research or experimentation by a research facility, has been deleted and the proviso has been reworded to indicate the intent of Congress and the requirements of the 1985 amendments. The proposed proviso now states that exceptions to the standards in Part 3 may be made for research facilities only when such exceptions are specified in the research protocol; are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee.

Section 2.101 deals with holding periods for dogs and cats by dealers and exhibitors, and approval of holding facilities for dealers and exhibitors. Paragraph (a) of this section requires a 5-day holding period for dogs and cats with two exceptions. One allows for a 1-calendar day holding period if the dogs or cats are obtained from another licensed dealer and have previously completed the 5-day holding period; the second allows for the humane destruction of any sick or injured dog or cat prior to the completion of the 5-day holding period. The Department proposes to retain the 5-day holding period for dogs and cats but to allow

several more exceptions to the holding period. As with the present regulations, a dealer or exhibitor who obtains a dog or cat from another licensed dealer or exhibitor must hold such dog or cat for 1-calendar day, excluding time in transit. This requirement is to be kept, but it is proposed to change the 1-calendar day holding time to a minimum period of 24-hours holding by each subsequent dealer or exhibitor. This would allow the dogs and cats a period of rest for food and water between dealers. The Department also proposes that any live dogs or cats that are obtained from a governmentally owned and operated pound or shelter, that have completed at least a 5-day holding period at the pound or shelter, need only be held by the dealer or exhibitor for a 24-hour period. The pound or shelter must be totally under city or county control and operated by city or county shelters do not qualify for this exception. Additionally, it is proposed that if a dealer or exhibitor obtains a dog or cat 120 days of age or less, from the person who bred and raised the dog or cat, then such animals would only have to be held for a 24-hour period, excluding time in transit. Dogs and cats must still be unloaded from any truck or car for the holding period to begin.

The Department proposes to delete paragraph (c) of this section, which deals with the approval of holding facilities for dealers and exhibitors, and proposes to add a new § 2.102, Holding Facility. Any dealer or exhibitor that wished to have a separate holding facility would still have to make an application to the Area Veterinarian in Charge and both parties would have to agree to comply with the regulations and standards and to allow inspections by Veterinary Services inspectors. Animals at such facilities would remain under the total control of the dealer or exhibitor and no dealer or exhibitor shall be approved as a holding facility for another dealer or exhibitor.

The Department also proposes to add a paragraph (b) to this section which would allow research facilities to apply for approval of holding facilities by the same process as dealers and exhibitors. This capability is not in the present regulations and many research facilities do have animals which are maintained at other locations. Establishing a holding facility approval system for research facilities would give the Department more control over such locations and would correct a field enforcement problem, plus clarify the procedure for establishing such holding facilities for research facilities.

Intermediate handlers and carriers have been added to § 2.125 pertaining to the furnishing of business information, as this section was not revised after the 1976 amendments to the Act. The same addition has been made to § 2.126 which pertains to the access and inspection of records and property. In addition, § 2.126 has been revised in format to make it very plain as to what each licensee and registrant is required to allow and provide. The taking of photographs as part of the inspection process is specifically addressed and made a part of the requirements. Although the Department has always had the authority to take photographs and inspect facilities as the inspector deems necessary, such wording was not plainly written into the regulations and this sometimes became a point of contention between the licensees or registrants and the inspector. The provision that USDA inspectors will take photographs as part of their inspection whenever it is deemed necessary is now to be in the regulations. Changes have been made in § 2.128 which deals with inspection for missing animals. The section has been revised in format, certain editorial changes have been made, and the terms "intermediate handler" and "carrier" have been added as this was not done after the 1976 amendments.

Section 2.129, which deals with the confiscation and destruction of animals, has been given certain editorial changes to improve its readability, and also has been revised to include intermediate handlers and carriers. The Department also proposes to delete the term "adequate veterinary care be given" and to replace it with the term "adequate care be given." This is due to the fact that some instances of animal neglect, which could lead to possible confiscation by the Department, may not technically be veterinary care deficiencies. Such situations as excessive filth or lack of cleaning, lack of proper food or water, or excessive parasites, all lead to a need for veterinary care but are a direct result of poor management and husbandry. The word "veterinary" is being deleted so as to give a broader scope to the concept of lack of adequate care, distress, and suffering. The present regulations require the Department to destroy any confiscated animals if their suffering cannot be corrected by veterinary care, with the licensee or registrant responsible for any costs which may be incurred. The Department intends to charge the licensees and registrants for costs incurred in making such confiscations and in caring for the animals. We do not, however, feel that the unnecessary destruction of animals should be required if suitable facilities can be found in which to place them. The Department, therefore, proposes that any confiscated animals not euthanized may be placed with other licensees or registrants which comply with the standards and regulations, and which can provide proper care. This would allow the Department some latitude in dealing with and disposing of confiscated animals. Paragraph (c) deals with the confiscation of endangered species of animals and requires that certain notifications be made before making any decision as to the destruction of such animals. The Department proposes to add marine mammals in this paragraph.

Handling of animals has been defined under § 1.1(dd) of 9 CFR to cover most instances of human contact with animals. When Congress amended the Animal Welfare Act in 1970 (Pub. L. 91-579) to include all warmblooded animals used for research or exhibition purposes or sold as pets, a paragraph concerning "handling" was incorporated into the new subsection in Part 3-Standards, which pertained to animals other than dogs, cats, rabbits, hamsters, guinea pigs, and nonhuman primates. This handling paragraph pertained to the humane treatment of "other animals" by human beings. A similar paragraph was not added to the existing four subsections covering the above named species. In 1979, standards covering marine mammals were added with a handling paragraph to cover the humane treatment of marine mammals. Again, a similar paragraph was not added to the original four subsections.

During the period since the Amendments of 1970, the Department's efforts to enforce the Animal Welfare Act and to prosecute inhumane handling and animal abuse cases by licensees and registrants in regard to dogs, cats, rabbits, guinea pigs, hamsters, and nonhuman primates has been hampered due to a lack of handling requirements for these animals. Some serious occurrances of animal abuse have occurred with nonhuman primates and dogs by licensees and registrants, and the Department has been unable to take appropriate corrective action. This clearly does not satisfy the intent of Congress in passing the Animal Welfare Act.

A new § 2.131 Handling, is therefore proposed to be added to the regulations in Part 2. In the present regulations and standards only subparts E and F in Part 3 contain requirements on handling. Similar requirements are not found in

the other subparts. Handling requirements pertain to the humane treatment, care, working, training, and transporting, concerning warmblooded animals. Animals must be protected form unnecessary discomfort, harm, trauma or distress, and may not be physically abused or deprived of food or water in order to work, train, or handle the animals. The Department intends that animals should be exhibited only under conditions consistent with their good health, and should have rest periods; that a knowledgeable uniformed attendant must be present at all times during public contact with the animals; that when dangerous animals are allowed to have public contact they must be under the direct control and supervision of an experienced handler; and that if public feeding is allowed the facility must provide the feed which must be appropriate to the type of animal and its needs. There must also be sufficient barriers or distance between the animals and the public so as reasonably to assure the safety of both, and drugs are not to be used to facilitate or allow public handling.

Rather than adding similar sections to each of the subparts in Part 3, it was decided to place the handling requirements in Part 2 so that it would apply to all regulated animals. This would simplify the regulations and standards, would make the requirements more easily found for reference, and would allow the Department to take appropriate action when such instances were discovered.

In the past few years there have been several instances of licensed dealers obtaining dogs and cats by fraudulent means and apparently knowingly purchasing stolen animals. These dealers were all class "B" dealers who buy and sell animals and the dogs and cats were all random source type animals, that is, they were not purchased from the persons who bred and raised the animals. The Department has also noted an increase in licensed dealers buying dogs and cats at flea markets or trade-day type sales. These animals are purchased from anyone and are usually purchased one, two, or three dogs or cats at a time. Many times the sellers have just recently acquired the dogs or cats and they are not what one would consider a family pet and have not been bred and raised by the persons who sold them. The net effect of the above types of activity is to encourage animal theft for profit. The theft of dogs and cats to supply the needs of research facilities is one of the basic reasons that the original Animal Welfare Act was passed. The above type of activity is, therefore, not in keeping with the original intent of Congress to protect animal owners from the theft of their pets. We certainly do not believe that a research facility would knowingly purchase stolen animals, but after such animals have gone through a dealer, there is no way to tell if such animals were possibly stolen.

In order to carry out the intent of Congress, and to attempt to stop the types of activity illustrated above, the Department is proposing that a new § 2.132, Procurement of random source dogs and cats by dealers be added to the regulations. It is proposed that class "B" dealers may obtain live random source dogs and cats only from State, county, or city owned and operated pounds or shelters. The class "B" dealer would not be able to obtain random source dogs and cats from nongovernment, contract, or humane pounds or shelters, or from individuals who did not breed and raise the dogs or cats on their own premises. Dealers could obtain nonrandom source dogs or cats from the person who bred and raised them, and could also breed their own dogs and cats for sale to research facilities and other concerns. It is believed that this restriction, plus the proposed requirement in § 2.75 whereby dealers must record the vehicle license number and State, and the drivers license number and State, for whomever they obtain animals from, would effectively block the growing activity in stolen and in fraudulently obtained dogs and cats.

Comments

Written comments are solicited for 60 days after publication of this document in the **Federal Register** and should refer to Docket Number 84–010.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information available to the Department, it has been determined that this proposal would not have significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; and would not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered for this proposal. Consideration was given to developing only the regulations and standards required by the 1985 amendments to the Act. A review of 9 CFR, Chapter 1, Subchapter A—Animal Welfare, had recently been completed however. There was a need for revision and updating of Parts 1, 2, and 3 and reorganization of many sections for clarification and easier reading were desirable. It was, therefore, decided to incorporate a general revision and reorganization of Parts 1, 2, and 3 with the development of regulations and standards required by the 1985 amendments. Such a course of action would cause minimal disruption to program operations, and would shorten the period of uncertainty for the regulated industry. It would also allow for the publication of Parts 1, 2, and 3 in their entirety, as sections or subsections, rather than the publication of changes by paragraph at several different times. This would provide field personnel with a complete set of requirements in one document instead of spreading them through two or three documents. The only other alternative was to make no revisions or changes. This option was not viable as it would not comply with the requirements of the 1985 amendments, and it would not provide the needed reorganization, clarification and corrections that were necessary in the existing regulations and standards.

It is not anticipated that the adoption of these proposed changes would have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Some of the proposed changes would ease the burden and lessen the impact of regulation on licensed dealers and exhibitors. Some of the proposed changes, as required by

the 1985 amendments to the Animal Welfare Act, will increase the regulatory burden on research facilities and will increase the cost of doing research on animals. Some of the proposed changes will ease the workload on USDA inspectors and other changes will require an increase in inspection time for inspectors.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 2

Licensing, Registration, Identification of animals, Records, Institutional animal care and use committees and adequate veterinary care, miscellaneous.

Accordingly, we propose to amend 9 CFR as follows:

Part 2 is revised to read as follows:

PART 2—REGULATIONS

Subpart A—Licensing

Sec.

Subpart B—Registration

Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

Subpart D—Attending Veterinarian and Adequate Veterinary Care

Subpart E—Identification of Animals

Subpart F—Stolen Animals

Subpart G—Records

Subpart H—Compliance With Standards and Holding Period

Subpart I—Miscellaneous

Authority: 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—Licensing

§ 2.1 Requirements and application.

(a)(1) Any person, 18 years of age or older, operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a license. Such person shall apply for a license on a form which will be furnished by the Area Veterinarian in Charge in the State in which such person operates or intends to operate. The applicant shall provide the information requested on the application form which shall include a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the Area Veterinarian in Charge.

(2) If an applicant for a license operates in more than one State, he/she shall apply in the State in which he/she has the principal place of business. All premises, facilities, or sites where such person operates or keeps animals shall be indicated on the application form or on a separate sheet attached to it. The completed application form, along with the application fee indicated in paragraph (d) of this section, and the annual license fee indicated in Table 1 or 2 of § 2.6 shall be filed with the Area Veterinarian in Charge.

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

(i) Retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, mink, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only. *Provided that:* Anyone wholesaling any animals or selling any wild or exotic animals or other nonpet animals retail, or selling any animals for research or exhibition requires a license;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license;

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs or cats and who sells the offspring of these dogs or cats, which were born and raised on their premises, for pets or exhibition, and is not otherwise required to obtain a license;

(iv) Any person who sells fewer than 25 dogs or cats per year which were born and raised on his premises, for research purposes or to any research facility and does not otherwise qualify for licensing. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;

(vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any

animals used only for the purposes of food or fiber (including fur);

(vii) Any person who breeds and raises domestic pet animals for direct retail sales to others for their own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and does not otherwise qualify for licensing;

(viii) Any person who buys animals solely for his own use or enjoyment and does not sell or exhibit animals, or otherwise qualify for licensing.

(b) Any person who sells fewer than 25 dogs or cats per year, for research or teaching purposes, and who does not otherwise qualify for licensing may obtain a voluntary license, provided the animals were born and raised on such person's premises. Such person shall comply with the requirements for dealers set forth in this part and the Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats set forth in Part 3 and shall agree in writing on a form furnished by Veterinary Services to comply with all the requirements of the Act and this subchapter. Voluntary licenses will not be issued to any other persons.

(c) No person shall have more than one license.

(d) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when the applicant has met the requirements of this section and of §§ 2.2 and 2.3, and has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the Area Veterinarian in Charge and the payment has cleared normal banking procedures. The applicant may pay such fees by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $15 for each returned check and will be required to pay all subsequent fees by certified check, money order, or cashier's check. A license will not be issued until payment has cleared normal banking procedures.

(e) On or before the termination date of the license, a licensee who wishes a renewal shall submit to the Area Veterinarian in Charge the application fee of $10, plus the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by the bank will be charged a fee of $15 for each returned check. One returned check will be deemed nonpayment of fees and will result in denial of license. Payment of fees must then be made by certified check, cashier's check, or money order. An applicant will not be licensed until his or her payment has cleared normal banking procedures.

(f) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of license, or for its suspension or revocation by the Secretary, as provided in the Animal Welfare Act.

§ 2.2 Acknowledgement of regulations and standards.

A copy of the applicable regulations and standards will be supplied to the applicant with each request for a license application. The applicant shall acknowledge receipt of such standards and agree to comply with them by signing the application form before a license will be issued.

§ 2.3 Demonstration of compliance with standards and regulations.

(a) Each applicant must demonstrate that his/her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in Parts 2 and 3 of this subchapter before a license will be issued. The applicant must make his/her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection, during business hours and/or at other times mutually agreeable to the applicant and Veterinary Services, to ascertain the applicant's compliance with the standards and regulations.

(b) If the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, the applicant will be advised of existing deficiencies and the corrective measures that must be completed to come into compliance with the standards and regulations. Issuance of the license will be denied until the animals, premises, facilities, vehicles, equipment, other premises and records are in compliance with all standards and regulations in this subchapter.

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective for 1 year unless:

(1) Said license has been revoked or suspended pursuant to section 19 of the Act.

(2) Said license is voluntarily terminated upon request of the licensee, in writing, to the Veterinarian in Charge.

(3) Such license has been terminated under this part.

(4) The applicant has failed to pay the application fee and the annual license fee as required in §§ 2.1 and 2.6.

There will be no refund of fees if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license and annual report form (VS Form 18–3) as required by § 2.7, and pay the required fees, on or before the termination date of the present license or the license shall automatically terminate on its anniversary date. The licensee will be notified by mail at least 60 days prior to the termination date of the license. Failure to comply with the annual reporting requirements, or to pay the required license fees prior to the termination date of the license, shall result in automatic termination of such license on the anniversary date of the license.

(c) Licensees must accept delivery of registered mail or certified mail notice and provide the Area Veterinarian in Charge notice of their address in conformity with the requirements in § 2.1.

(d) Any person who seeks the reinstatement of a license which has been automatically terminated must follow the procedure applicable to licensees set forth in § 2.1.

(e) Licenses are issued to persons for specific premises and do not transfer upon change of ownership or location.

(f) A license which is invalid under this part shall be surrendered to the Area Veterinarian in Charge. If the license cannot be found, a written statement so stating shall be provided to the Area Veterinarian in Charge.

§ 2.6 Annual license fees.

(a) In addition to the application fee of $10 required to be paid upon the application for a license under § 2.1, each licensee shall submit to the Area Veterinarian in Charge the annual license fee prescribed in this section. Paragraph (b) of this section indicates the method used to calculate the appropriate fee. The amount of the fee is determined from Table 1 or 2 of this section.

(b)(1) *Class "A" license.* Except as provided in paragraphs (b) (4) and (5) of this section, the annual license fee for a Class "A" dealer shall be based on 50 percent of the total gross amount, expressed in dollars, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, by the dealer or

applicant during his or her preceding business year (calendar or fiscal) in the case of a person who operated during such a year. If animals are leased, the lessor shall pay a fee based on 50 percent of any compensation received from such animals and the lessee shall pay a fee based upon the net compensation received from such leased animals, as indicated for dealers in Table 1 of this section.

(2) *Class "B" license.* Except as provided in paragraphs (b) (4) and (5) of this section, the annual license fee for a Class "B" dealer shall be established by calculating the total amount received from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, during the preceding business year (calendar or fiscal) less the amount paid for such animals, by the dealer or applicant. This net difference, exclusive of other costs, shall be the figure used to determine the license fee of a Class "B" dealer or an applicant for a Class "B" license. If animals are leased, the lessor and lessee shall each pay a fee based on the net compensation received from such animals calculated from Table 1 of this section.

(3) Except as provided in paragraphs (b) (4) and (5) of this section, the annual license fee for a broker or an operator of an auction sale shall be that of a class "B" dealer and shall be based on the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals, or negotiating the sale of animals, by brokers, or by the operator of an auction sale to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal).

(4) In the case of an applicant for a license as a dealer who operated at least 6 months of his preceding business year but not the entire year, the annual license fee shall be computed by estimating the yearly volume of business on the basis of the business done during the period of operation.

(5) In the case of an applicant for a license as a dealer who did not operate for at least 6 months during his preceding business year, the annual license fee will be based on the anticipated yearly dollar amount of business, as provided in paragraphs (b) (1), (2), and (3) of this section, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale.

(6) The amount of the annual fee required to be paid upon application for a class "C" license as an exhibitor under this section shall be based on the number of animals which the exhibitor owned, held, or exhibited at the time the application is signed and dated or during the previous year, whichever is greater, and will be the amount listed in Table 2. Animals which are leased shall be included in the number of animals being held by both the lessor and the lessee when calculating the annual fee. An exhibitor shall pay his/her annual license fee on or before the termination date of the license and the fee shall be based on the number of animals which the exhibitor is holding or has held during the year (both owned and leased).

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE, CLASS "A" AND "B" LICENSE

Over	But not over	Fee
0	$500	$50
$500	2,000	100
2,000	10,000	200
10,000	25,000	400
25,000	50,000	600
50,000	100,000	800
100,000		1,000

TABLE 2.—EXHIBITORS—CLASS "C" LICENSE

	Fee
Number of animals:	
1 to 5	$50
6 to 25	125
26 to 50	250
51 to 500	375
501 and up	500

(d) If a person meets the licensing requirements for more than one class of license, he shall be required to pay the fee for the type business which is predominant for his operation, as determined by the Secretary.

(e) In any situation in which a licensee shall have demonstrated in writing to the satisfaction of the Secretary that he has good reason to believe that the dollar amount of his business for the forthcoming business year will be less than the previous business year, then his estimated dollar amount of business shall be used for computing the license fee for the forthcoming business year: *Provided, however:* That if such dollar amount, upon which the license fee is based, for that year does in fact exceed the amount estimated, the difference in amount of the fee paid and that which was due based upon such actual dollar business upon which the license fee is based, shall be payable in addition to the required annual license fee for the next subsequent year, on the anniversary date of his license as prescribed in this section.

§ 2.7 Annual report by licensees.

(a) Each year, within 30 days prior to the termination date of his/her license, a licensee shall file with the Area Veterinarian in Charge an application for license and annual report upon a form which will be furnished to him upon request to the Area Veterinarian in Charge. When the requirements of §§ 2.1, 2.2, 2.3, and 2.6 have been met, the license will be issued subject to the exceptions in §§ 2.5, 2.10, and 2.11.

(b) A person licensed as a dealer shall set forth in his/her license application and annual report the dollar amount of business, upon which the license fee is based, from the sale of animals, directly or through an auction sale, to research facilities; dealers; exhibitors; retail pet stores; and persons for use as pets, by the licensee during the preceding business year (calendar or fiscal) and such other information as may be required thereon.

(c) A licensed dealer who operates as a broker or an operator of an auction sale shall set forth in his/her license application and annual report the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals by the licensee to research facilities, dealers, exhibitors, retail pet stores, and persons, for use as pets, during the preceding business year (calendar or fiscal), and such other information as may be required thereon.

(d) A person licensed as an exhibitor shall set forth in his/her license application and annual report the number of animals which are owned, held, or exhibited by him or her, including those which are leased, during the previous year or at the time he signs and dates the report, whichever is greater.

(e) The licensee shall have his/her attending veterinarian sign a statement on the annual report certifying that the attending veterinarian has read and understands the regulations and standards under the Animal Welfare Act, and that he/she has visited the premises and has carried out the responsibilities as indicated in the regulations and in the written program of adequate veterinary care.

§ 2.8 Notification of change of name, address, control, or ownership of business.

A licensee shall promptly notify the Area Veterinarian in Charge by certified mail of any change in the name, address, management, or substantial control or ownership of his business or operation.

or by any additional sites, within 10 days after such change.

§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based will not be licensed within the period during which the order of suspension or revocation is in effect.

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) Any person whose license has been suspended for any reason shall not be licensed in his/her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during such period.

(b) Any person whose license has been revoked shall not be eligible to apply for a license in his/her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be eligible to apply for a license.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during such period of suspension or revocation.

§ 2.11 Denial of license.

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1, 2.2, or 2.3, or has not paid the fees indicated in § 2.6;

(2) Is not in compliance with any of the regulations or standards in this subchapter;

(3) Has had a license suspended or revoked as set forth in § 2.10;

(4) Has been fined, sentenced to jail, or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application;

(5) Has made any false or fraudulent statements, or provided any false or fraudulent records to the Department; or

(6) Has interfered with, threatened, abused (including verbal abuse), or harassed any Veterinary Services inspector in the course of carrying out his/her duties.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. Such license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, or if his/her license has been suspended, after the end of the suspension period.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license has been suspended or denied, has a substantial interest, financial or otherwise, will be licensed within 1 year of such license denial or until the license suspension period has been completed.

Subpart B—Registration

§ 2.25 Requirements and procedures.

(a) Each research facility, carrier, and intermediate handler and each exhibitor not required to be licensed under section 3 of the Act and the regulations of this subchapter, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Area Veterinarian in Charge. Such registration form shall be filed with the Area Veterinarian in Charge for the State in which the registrant has his principal place of business, and shall be updated every 3 years by the completion and filing of a new registration form which will be provided by the Area Veterinarian in Charge. Where a school or department of a university or college uses or intends to use animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

(b) In any situation in which a school or department of a university or college is a separate legal entity and its operations and administration are independent of those of the university or college, upon proper showing thereof to the Secretary, the school or department will be registered rather than the university or college.

(c) A subsidiary of a business corporation, rather than the parent corporation, will be registered as a research facility or exhibitor unless the subsidiary is under such direct control of the parent corporation that to effectuate the purposes of the Act, the Secretary determines that it is necessary that the parent corporation be registered.

§ 2.26 Acknowledgment of regulations and standards.

A copy of the regulations and standards in this Subchapter will be supplied with each registration form. The registrant shall acknowledge receipt of such regulations and standards and agree to comply with them by signing a form provided for such purpose by Veterinary Services. Such form shall be filed with the Area Veterinarian in Charge.

§ 2.27 Notification of change of operation.

(a) A registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name or address, or any change in the operations or business, which would affect its status as a research facility, exhibitor, carrier, or intermediate handler, within 10 days after making such change.

(b)(1) A registrant which has not used, handled, or transported animals for a period of at least 2 years may be placed in an inactive status by making a written request to the Area Veterinarian in Charge. A registrant shall file an annual report of its status (active or inactive). A registrant shall notify the Area Veterinarian in Charge in writing at least 10 days before using, handling, or transporting animals again after being in an inactive status.

(2) A registrant which goes out of business or which ceases to function as a research facility, carrier, intermediate handler, or exhibitor, or which changes its method of operation so that it no longer uses, handles, or transports animals, and which does not plan to use, handle, or transport animals again at any time in the future, may have its registration canceled by making a written request to the Area Veterinarian in Charge. Such facility is responsible for reregistering and demonstrating its compliance with the Act and regulations should it start using, handling, or transporting animals at any time after such registration is canceled.

§ 2.28 Annual report of research facilities.

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the Area Veterinarian in Charge for the State where the facility is located on or before December 1 of each calendar year. The report shall be signed by the attending veterinarian, the Institutional Animal Care and Use Committee Chairman, and the Chief Executive Officer of the facility, and

shall cover the previous Federal fiscal year of October 1 through September 30.

(b) Such report shall:

(1) Show that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during pre- and post-surgical care, and during actual research, teaching, testing, surgery, or experimentation were followed by the research facility;

(2) Assure that the principal investigator has considered alternatives to painful procedures;

(3) Assure that the facility is adhering to the standards and regulations under the Animal Welfare Act. An explanation for any deviation from the standards and regulations shall be attached to the report;

(4) State the location of the facility or facilities where animals were housed or used in actual research, testing, teaching, or experimentation;

(5) State the common names and the numbers of animals upon which teaching, research, experiments, or tests were conducted involving no pain, distress, or use of pain-relieving drugs. Routine procedures (e.g., injections, tattooing, blood sampling) should be reported with this group;

(6) State the common names and the numbers of animals upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used;

(7) State the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would adversely affect the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests. A detailed statement on the procedures producing pain or distress in these animals and explaining the reasons such drugs were not used shall be attached to the annual report;

(8) State the common names and the numbers of animals being bred, conditioned or held for use, teaching, testing, experiments, research, or surgery but not yet used for such purposes; and

(9) Include a statement by the Chief Executive Officer of the facility that the attending veterinarian and the Institutional Animal Care and Use Committee have the authority to enter any animal area, at any reasonable time, in order to carry out their responsibilities as set forth under §§ 2.35 and 2.40; and that the Committee has satisfactorily carried out its responsibilities; and that the facility complies with the Act, regulations, and standards.

(c) Such annual report shall be certified by the attending veterinarian of the research facility and by the Institutional Animal Care and Use Committee Chairman as indicated in §§ 2.35(g) and 2.40(e)(2)(iii). This report will also indicate whether the nonaffiliated member concurs or does not concur with the report.

Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

§ 2.30 Additional requirements for research facilities.

(a) Each research facility using or holding animals for research, testing, or teaching shall ensure:

(1) That animal pain and distress are minimized;

(2) That adequate veterinary care including the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, are provided for at all times; and

(3) That animals are housed and cared for according to this subchapter and that any deviations are fully explained and approved by the Committee.

(b) Each research facility shall establish and maintain an Institutional Animal Care and Use Committee (Committee).

(c) Each research facility shall provide the Committee and the attending veterinarian with the authority to enter all animal areas at any reasonable time in order to carry out their responsibilities.

(d) Each research facility shall require that all research protocols falling under Categories 3 and 4 of § 2.35(b)(3)(ii) which use live warmblooded animals must be approved by the Committee, including the attending veterinarian, prior to the start of any such research, testing, or teaching; that the principal investigator shall consider alternatives to any procedure likely to produce pain or distress in an experimental animal; and that the principal investigator will document such considerations in a written statement to the Committee as required by § 2.35.

(e) Each research facility, in any practice which might reasonably be expected to cause pain to an animal, shall establish a written policy:

(1) Ensuring that the attending veterinarian is consulted in the planning of such procedures and during the procedure;

(2) Providing for the proper use of anesthetics, analgesics, and tranquilizers in accordance with the directions of the attending veterinarian and the accepted or common veterinary usage of such drugs;

(3) Ensuring that all pre-surgical, surgical, and post-surgical care by laboratory workers is in accordance with established veterinary medical and nursing procedures, and that such care, surgical rooms, and qualifications of surgical personnel have been evaluated and approved by the attending veterinarian;

(4) Prohibiting the use of paralytic drugs without anesthesia.

(f) The research facility shall establish procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except as provided in § 2.35.

(g) Exceptions to the requirements of paragraphs (e) and (f) of this section may be made only when specified by the research protocol and approved by the Committee. The withholding of anesthetics, analgesics, tranquilizers, or euthanasia shall be done only when scientifically necessary and shall continue only for the necessary period of time. Exceptions to any of the requirements of paragraphs (e) and (f) of this section shall be detailed and explained by the principal investigator in a written report filed with the Committee. A copy of such report approved by the Committee shall be attached to the facility's annual report to the Department.

§ 2.35 Institutional Animal Care and Use Committee.

(a) *Membership.* (1) Each research facility shall establish and maintain an Institutional Care and Use Committee;

(2) The members of each Committee shall be appointed by the Chief Executive Officer of the research facility;

(3) The Committee shall be composed of a chairman and at least two additional members;

(4) Committee members shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility.

(5) Of the members of the Committee:

(i) At least one shall be a Doctor of Veterinary Medicine who is the attending veterinarian for the research facility and who is accredited by the U.S. Department of Agriculture in accordance with regulations issued by

the Secretary under the Animal Welfare Act;

(ii) At least one shall not be affiliated in any way with such facility other than as a member of the Committee and shall not be a member of the immediate family of a person who is affiliated with such facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals;

(6) If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility;

(7) The research facility shall maintain an up-to-date list of Committee members and shall indicate for each member his/her name, degrees, position, qualifications, address, and telephone number. A copy of the current list of Committee members shall be maintained by the attending veterinarian for the facility and shall be made available for inspection by APHIS officials.

(b) *Duties and responsibilities*—(1) *Inspections.* (i) The Committee shall inspect at least twice a year, no more than 6 months apart, all animal study areas and animal facilities of the research facility and shall review as part of the inspection:

(A) All practices and procedures involving pain to animals, and

(B) The condition of all animals, in order to ensure compliance with the provisions of the Act and to minimize pain and distress to the animals.

(ii) The Committee shall use Title 9, Chapter 1, Subchapter A—*Animal Welfare,* as a basis of its inspection of animal areas and facilities.

(iii) Exceptions to the requirement of inspection of animal study areas may be made by the Secretary if the animals are studied in their natural environment and the study area prohibits easy access. Requests for such exemption shall be addressed to the Deputy Administrator, APHIS, Room 756, 6505 Belcrest Road, Hyattsville, MD 20782, and shall clearly set forth the reasons why such inspections cannot be made.

(2) *Reports.* (i) After each inspection is completed, the Committee shall file an inspection certification report at a central location at the research facility. Such reports shall be available to APHIS officials and to officials of funding Federal agencies for inspection and copying. Such reports shall contain at least the following:

(A) The date the inspection was made;

(B) The signature of a majority of the Committee members and any minority views of the Committee;

(C) Reports of:

(*1*) Any violations of the regulations, standards, or assurances required by the Secretary, including any deficient conditions of animal care or treatment and any findings and recommendations of the Committee;

(*2*) Any deviations of research practices from the originally approved proposals (protocols) that adversely affect animal welfare;

(*3*) Any notification to the facility regarding such conditions, deviations, or deficiencies;

(*4*) Any corrections made by the facility; and

(*5*) Any other information pertinent to the activities of the Committee and the status or condition of the animal facilities; and

(D) An assurance statement by the Committee that its members have reviewed all painful procedures using animals and that such procedures: (1) Are in accordance with the research protocols, procedures, and practices approved by the Committee, (2) are in accordance with any changes or special procedures approved by the Committee, or (3) are not in accordance with the approved protocols, procedures, or practices, and that the investigator(s) has been instructed to cease such methods and procedures immediately and to comply with the protocols, procedures, and practices approved by the Committee.

(ii) The Committee: (A) Shall notify the administrative representative of the research facility of any deficiencies in complying with the Act, regulations, or standards found on inspection. If, 30 days after notification and opportunity for correction, such deficiencies remain uncorrected, the Committee shall notify the Deputy Administrator and any funding Federal agency of such deficiencies in writing and shall provide a copy of its report and notification to the administrative representative of the facility; and

(B) Shall provide a copy of any report showing deficiencies in complying with the regulations or standards to the Veterinary Services inspector(s) and any funding Federal agency of the project with respect to which uncorrected deficiencies occurred.

(iii) The Committee shall establish a reporting procedure whereby laboratory or research facility personnel or employees can report violations of any regulation or standard established under the Act including problems, deviations, or deficiencies with animal housing, care, or use. The Committee shall review and, if warranted, investigate any such reports, in addition to the biyearly inspections, and shall prepare and file a report at the central location specified in paragraph (b)(2)(i) of this section, indicating the nature of the problem or complaint; the Committee's findings; and any corrective actions taken. No facility employee, Committee member, or laboratory personnel shall be discriminated against or be subject to any reprisal for reporting violations of any regulation or standard under the Act.

(iv) Any reports required by this section shall remain on file for at least 3 years at the research facility and shall be available for inspection and review by APHIS inspectors and any funding Federal agency.

(3) *Reviews.* (i) Upon the request of the Deputy Administrator, the Committee shall make available for review to assure compliance with the provisions of the Act all research protocols involving animals and all assurance statements required by the U.S. Public Health Service (PHS) or any other funding Federal agency. The USDA inspectors shall maintain the confidentiality of such information.

(ii) No research, testing, or teaching involving protocols falling under Categories 3 and 4 in this paragraph performed by a facility's personnel at any location shall commence prior to approval by the Committee. Prior to granting approval, the Committee shall ensure that protocols in any of the categories listed below contain provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs.

CATEGORIES OF ANIMAL USE IN RESEARCH AND TEACHING

Category	Examples
Category 1 The use of animals in teaching, testing, or experimental procedures that would be expected to produce little or no pain or distress.	1. Holding animals for use in research or teaching. 2. Simple procedures such as injections, blood sampling, and tattooing. 3. Physical examinations. 4. Standard, approved methods of euthanasia. 5. Simple, group behavioral observations. 6. Procedures on anesthetized animals which do not regain consciousness.
Category 2 The use of animals in procedures that involve minor pain or distress of short duration.	1. Exposure of blood vessels or implantation of chronic catheters. 2. Behavioral studies or procedures that involve short term restraint. 3. Food/water deprivation for short periods. 4. Noxious stimuli from which escape is possible. 5. Surgical procedures that may result in some minor post-surgery pain or distress. 6. Diagnostic procedures such as laparoscopy or needle biopsies.

CATEGORIES OF ANIMAL USE IN RESEARCH AND TEACHING—Continued

Category	Examples
Category 3	
The use of animals in procedures that involve significant but unavoidable pain or distress to the animals.	1. Deliberate induction of behavioral stress, loss of sight, or similar debilitation to test its effect. 2. Major surgical procedures such as the invasion and exposure of body cavities, orthopedics, or major dental work, and those that result in significant post-operative pain or distress. 3. Induction of an anatomic or physiological deficit that will result in pain or distress. 4. Application of noxious stimuli from which escape is impossible or prolonged periods of physical restraint. 5. Deprivation studies. 6. Induction of aggressive or self-mutilating behavior. 7. Procedures that produce pain or distress in which anesthetics are not used, such as toxicity studies, radiation sickness, certain infections, and stress or shock research. 8. Infliction of minor burns or trauma.
Category 4	
The use of animals in procedures that involve the inflicting of severe pain or distress or chronic, unrelieved pain or distress, or death.	1. Infliction of severe burns or trauma without anesthetics. 2. Attempts to induce psychotic-like behavior. 3. Killing by inhumane means. 4. Inescapable severe stress, terminal stress, or long-term or permanent physical restraints. 5. Performing any major surgical procedure without anesthetics.

(iii) The Committee shall approve Such protocols only when animal pain, distress, and functional or sensory impairment are minimized; all survival surgery is performed using aseptic procedures; adequate veterinary care is planned for and provided; multiple use of such animal(s) is justified for the purpose of conserving an endangered species or marine mammals or as an essential related component of a particular project or protocol; and the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, when necessary, and that the use of such drugs is in accordance with established or accepted veterinary medical procedures and usage. The use of such drugs shall be in accordance with the instructions of the attending veterinarian.

(iv) The Committee shall ensure that pain relieving drugs are used whenever an animal is subjected to any procedure that would reasonably be expected to cause pain or distress in a human subject were that procedure applied to a human being: *Provided, however:* That the use of pain relieving drugs may be minimized or exempted if fully explained and justified in the research protocol and agreed to by the Committee and the attending veterinarian.

(v) The Committee shall require written assurance from the principal investigator that:

(A) Alternative procedures have been considered for any procedure likely to produce pain or distress in an experimental animal and that no other procedures are suitable;

(B) The experiment does not unnecessarily duplicate previous experiments. The assurance is to indicate what information sources were consulted, what other procedures were considered, and what techniques will be used to minimize pain and discomfort to the animals;

(vi) The Committee shall in any practice which could be expected to cause pain to animals:

(A) Require that the principal investigator consult with the attending veterinarian in the planning of such procedure and during the procedure;

(B) Require that the principal investigator provide for the use of tranquilizers, analgesics, and anesthetics in accordance with the attending veterinarian's recommendations and established or accepted veterinary procedures, including the training of laboratory personnel to properly carry out these procedures so as to minimize pain and distress;

(C) Require that pre-surgical and post-surgical care be provided by laboratory workers, in accordance with the instructions of the attending veterinarian, and in accordance with established veterinary medical and nursing procedures;

(D) Require that all aseptic survival surgeries be conducted only in facilities intended for that purpose, that such facilities be operated and maintained under aseptic conditions, and that any surgery be performed or directly supervised by trained, experienced personnel;

(E) Prohibit the use of paralytic drugs without anesthesia; and

(F) Prohibit the withholding of tranquilizers, anesthesia, analgesia, or euthanasia except when scientifically necessary and approved by the Committee and the attending veterinarian. When the withholding of such drugs are approved, it shall continue for only the shortest necessary period of time.

(vii) The Committee shall assure that no animal is used in more than one major operative experiment from which it is allowed to recover. *Provided, however:* That exceptions may be made to limiting the number of survival surgical procedures on an animal under the following circumstances:

(A) When scientifically necessary and approved by the Committee;

(B) When required by other surgical procedures or related by protocol and approved by the Committee;

(C) When required to reduce or conserve the number of marine mammals or endangered species of animals used and approved by the Committee;

(D) When required to protect the health and well-being of the animal as determined by the attending veterinarian;

(E) When the procedure is a routine, elective veterinary surgical or diagnostic procedure;

(F) In other special circumstances as determined by the Secretary on an individual basis. Written requests and supporting data should be sent to the Deputy Administrator, USDA, APHIS, VS, 6505 Belcrest Road, Federal Building, Room 756, Hyattsville, MD 20782.

(G) Cost savings alone is not adequate reason for performing multiple survival surgical procedures.

(c) *Exceptions.* Exceptions to compliance with the standards and regulations as set forth under Title 9 CFR, Chapter 1, Subchapter A—*Animal Welfare,* shall be made by the Committee only when such areas of noncompliance are necessary for the accomplishment of the research design, and are specified in the research protocol, and are explained in detail. The principal investigator shall file a report explaining such areas of noncompliance in detail with the Committee. A copy of such report shall be kept on file by the facility and shall be available for inspection by USDA inspectors or officials of granting agencies.

(d) *Exercise for dogs and psychological well-being of primates.* The Committee shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system indicating that such a procedure or system is being carried out.

(e) *Federal research facilities.* Each Federal research facility shall establish an Institutional Animal Care and Use Committee which shall have the same composition, duties, and responsibilities required of nonfederal research facilities by this section with the following exceptions:

(1) The Committee shall report deficiencies to the head of the Federal agency conducting the research rather than to the Animal and Plant Health Inspection Service;

(2) The head of the Federal agency conducting the research shall be responsible for all corrective action to be taken at the facility and for the granting of all exceptions to inspection protocol.

(f) *Training.* (1) Each research facility shall provide for the training and continuing education of scientists, research technicians, animal technicians, and other personnel involved with animal use, care, and treatment at the facility.

(2) Such training shall be reviewed by the Committee and the attending veterinarian and shall be made available annually or as appropriate to the individuals and their responsibilities.

(3) The Committee shall review the status of the training and qualifications of researchers to use animals at least once a year, and shall review the list of research personnel and shall designate those who require additional training.

(4) This training shall be available for review by Department inspectors. Such training shall include instruction in at least the following areas:

(i) Humane methods of animal maintenance and experimentation and animal ethics;

(ii) Research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress;

(iii) Utilization of the information service at the National Agricultural Library;

(iv) Methods whereby deficiencies in animal care and treatment should be reported;

(v) The basic needs of each species of animal;

(vi) Familiarization with the intent and requirements of the Animal Welfare Act;

((vii) How to handle and care properly for the various species of animals used by the facility;

(viii) Proper pre-surgical and post-surgical care of animals;

(ix) Proper use of anesthetics, analgesics, and tranquilizers in the species of animals used by the facility, including the common or accepted use of such drugs in those species for which the drug is not licensed;

(x) Acceptable aseptic surgical methods and procedures;

(xi) Other training, techniques, or procedures the Committee, or the Secretary, may feel is necessary.

(g) *Annual report of research facility.* The Committee Chairman shall sign an assurance statement on the Annual Report of Research Facility (VS Form 18–23) certifying—

(1) That the Committee has carried out the responsibilities and requirements of this section;

(2) That the facility is following the standards required by the Animal Welfare Act governing the care, treatment, and use of animals during actual research or experimentation;

(3) That it has required a detailed explanation to be provided by the principal investigator when drugs are not used to alleviate pain or distress, and that all such explanations are attached to the Annual Report of Research Facility, and

(4) That it has required that all other exceptions to the standards have been specified by the protocols and approved by the Committee.

Subpart D—Attending Veterinarian and Adequate Veterinary Care

§ 2.40 Attending veterinarian and veterinary care.

(a) Each licensed or registered research facility, dealer, or exhibitor shall have an attending veterinarian who is accredited by the U.S. Department of Agriculture in accordance with regulations issued by the Secretary under the Animal Welfare Act and who shall provide adequate veterinary care to their animals in compliance with this section.

(b) The attending veterinarian shall establish, maintain, and supervise programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and adequate veterinary care for all animals on the premises of the dealer, exhibitor, or research facility. Such programs shall include the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia when indicated.

(c) A written program of adequate veterinary care between the dealer, exhibitor, or research facility and the Doctor of Veterinary Medicine shall be drawn up and reviewed on a yearly basis. If a part-time or consulting veterinarian is utilized, such program shall include regularly scheduled visits appropriate to the facility's needs. The facility will keep a copy of the written program on file at the facility and shall provide a copy to the Area Veterinarian in Charge each year. Such written program shall include at least the following:

(1) The facility name and address;

(2) The veterinarian's name and address;

(3) How the programs are to be established and reviewed;

(4) The frequency of visits to be made to the premises by the veterinarian to assure adequate veterinary care and supervision of required programs;

(5) The method or system of euthanasia to be utilized, by species, and who shall be authorized to perform it; and

(6) The dated signature of the attending veterinarian and of a legally responsible official of the research facility, dealer, or exhibitor.

(d) Each animal shall be observed daily by the dealer, exhibitor, veterinarian, the animal caretaker in charge, or someone under their direct supervision. The facility shall provide veterinary care or humanely dispose of sick, diseased, injured, lame, or blind animals unless such action is inconsistent with the research purposes for which such animal was obtained and is being held: *Provided, however,* That this provision shall not affect compliance with any State or local law requiring the holding, for a specified period, of animals suspected of being diseased.

(e) *Research facilities.* (1) The attending veterinarian of each research facility shall be a member of the Institutional Animal Care and Use Committee and shall have the authority to enter all animal rooms, sites, facilities, and animal use areas, at any time.

(2) In addition to the requirements set forth in paragraphs (a) through (d) of this section, the attending veterinarian of a research facility shall:

(i) Provide consultation and guidance to principal investigators and other laboratory personnel during protocol planning and development, and during actual research, whenever any procedure is likely to produce pain or distress in an animal. Such consultation and guidance shall include at least the following areas:

(A) The proper use of tranquilizers, analgesics, anesthetics, and euthanasia according to the accepted, or common veterinary practice procedures;

(B) Provision for adequate pre-surgical and post-surgical care by laboratory workers in accordance with current established veterinary medical and nursing procedures;

(C) Agreement to the withholding of tranquilizers, anesthesia, analgesia, or euthanasia only when scientifically necessary and only for the necessary period of time; and

(D) Evaluation and approval of all animal surgical areas and qualifications

of personnel involved with animal surgery.

(ii) Establish a recordkeeping system and standard operating procedure, which indicates and assures that the proper drugs are being used and that proper pre-surgical and post-surgical care are being carried out on a daily basis;

(iii) Sign an assurance statement on the Annual Report of Research Facility (VS Form 18–23) each year certifying—

(A) That he/she has the authority to enter all animal areas;

(B) That he/she has carried out the requirements of this section;

(C) That he/she has read and understands the regulations and standards in Parts 2 and 3.

Subpart E—Identification of Animals

§ 2.50 Time and method of identification.

(a) A class "A" dealer (breeder) shall identify all live dogs and cats on the premises as follows:

(1) When the class A dealer sells or otherwise removes live dogs or cats from the premises for delivery to a research facility or exhibitor or to another dealer, or for sale, through an auction sale or to any person for use as a pet, each such live dog or cat shall be identified by an official tag of the type described in § 2.51 affixed to the animal's neck by means of a collar made of material generally considered acceptable to pet owners as a means of identifying their pet dogs or cats,[1] or shall be identified by a distinctive and legible tattoo marking acceptable to and approved by the Deputy Administrator.

(2) Live puppies or kittens, less than 16 weeks of age, shall be identified by—

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Deputy Administrator, or

(iii) A plastic-type collar acceptable to the Deputy Administrator which has the information required for an official tag pursuant to § 2.51 legibly placed thereon.

(3) All other live dogs or cats on the premises must be identified in the records by an accurate and distinctive description, or by a distinctive and legible tattoo marking, or by an official tag pursuant to § 2.51.

(b) A class "B" dealer shall identify all live dogs and cats under his control, on his premises as follows:

(1) When live dogs or cats are purchased or otherwise acquired, they shall be immediately identified by—

(i) Affixing to the animal's neck an official tag as set forth in § 2.51 by means of a collar made of material generally acceptable to pet owners as a means of identifying their pet dogs or cats,[1] or

(ii) By a distinctive and legible tattoo marking approved by the Deputy Administrator.

(2) If any live dog or cat is already identified by an official tag or tattoo which has been applied by another dealer or exhibitor, the dealer or exhibitor who purchases or otherwise acquires such animal may maintain identification of the dog or cat by the previous identification number, or may replace such previous tag with his own official tag or approved tattoo. In either case, the class B dealer or class C exhibitor shall correctly list both official tag numbers or tattoos in his records of purchase which shall be maintained in accordance with §§ 2.75 and 2.77. Any new official tag or tattoo number shall be used on all records of the subsequent sales of such dog or cat.

(3) Live puppies or kittens, less than 16 weeks of age, shall be identified by—

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Deputy Administrator, or

(iii) A plastic-type collar acceptable to the Deputy Administrator which has the information required for an official tag pursuant to § 2.51 legibly placed thereon.

(4) When any dealer has made a reasonable effort to affix an official tag to a cat, as set forth in paragraphs (a) and (b) of this section, and has been unable to do so, or when the cat exhibits serious distress from the attachment of a collar and tag, the dealer shall attach the collar and tag to the door of the primary enclosure containing the cat and take proper measures to maintain the identity of the cat in relation to the tag. Each primary enclosure shall contain no more than one weaned cat without an affixed collar and official tag, unless such cats are identified by a distinctive and legible tattoo or plastic-type collar approved by the Deputy Administrator.

(c) A class "C" exhibitor shall identify all live dogs and cats under his control or on his premises, purchased, or otherwise acquired:

(1) As set forth in (b)(1) or (b)(3) of this section, or

(2) May identify each dog or cat with—

(i) An official USDA sequentially numbered tag kept on the door of the animals cage or run;

(ii) A record book containing each animal's number, a written description of the animal, the data required by § 2.75(a), and a clear photograph of each animal; and

(iii) A second, duplicate tag to accompany each dog or cat whenever it leaves the compound or premises.

(d) Unweaned puppies or kittens need not be individually identified as required by paragraphs (a) and (b) of this section while they are maintained as a litter with their dam in the same primary enclosure provided the dam has been so identified.

(e) (1) All live dogs or cats delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility, shall be identified at the time of such delivery for transportation, purchase, sale, disposal, or acquisition by the official tag or tattoo which was affixed to the animal at the time it was acquired by the research facility, as required by this section, or by a tag, tattoo, or collar, applied to the live dog or cat by the research facility and which individually identifies such dog or cat by description or number. Both official tag or tattoo numbers shall be correctly listed in the records of purchase, acquisition, disposal, or sale which shall be maintained in accordance with § 2.76.

(2) All live dogs or cats delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of from any exempt source, shall be identified at the time of such delivery, purchase, sale, disposal, or acquisition, by an official tag or tattoo affixed by the research facility and maintained in the records in accordance with § 2.76.

(f) (1) All animals, except dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of, by any dealer or exhibitor shall be identified by the dealer or exhibitor at the time of such delivery for transportation, purchase, sale, acquisition or disposal, as provided for in this paragraph and records maintained as required in §§ 2.75 and 2.77.

(2) When one or more animals, other than dogs or cats, are confined in a container, the animal(s) shall be identified by—

(i) A label attached to the container which shall bear a description of the

[1] In general, well fitted collars made of leather or plastic will be acceptable under this provision. The use of certain types of chains presently used by some dealers may also be deemed acceptable. A determination of the acceptability of a material proposed for usage as collars from the standpoint of humane considerations will be made by Veterinary Services on an individual basis in consultation with the dealer or exhibitor involved. The use of materials such as wire, elastic, or sharp metal that might readily cause discomfort or injury to the dogs or cats is not acceptable.

animals in the container, including (A) the number of animals, (B) the species of the animals, (C) any distinctive physical features of the animals, and (D) any identifying marks, tattoos, or tags attached to the animals;

(ii) Marking the container with a painted or stenciled number, which number shall be recorded in the records of the dealer or exhibitor together with (A) a description of the animal(s), (B) the species of the animal(s), and (C) any distinctive physical features of the animal(s); or

(iii) A tag or tattoo applied to each animal in the container by the dealer or exhibitor and which individually identifies such animal by description or number.

(3) When any animal, other than a dog or cat, is not confined in a container, it shall be identified on a record, as required by § 2.75 which shall accompany the animal at the time it is delivered for transportation, transported, purchased, or sold, and shall be kept and maintained by the dealer or exhibitor as part of his records.

§ 2.51 Form of official tag.

(a) The official tag shall be made of a durable alloy such as brass, bronze, or steel or of a durable plastic. Aluminum of a durable thickness may also be used. Such tag shall be one of the following shapes:

(1) Circular in shape and not less than 1¼ inches in diameter, or

(2) Oblong and flat in shape, not less than 2 inches by ¾ inch and riveted to an acceptable collar.

(b) Each tag shall have the following information embossed or stamped on it which is easily readable—

(1) The letters "USDA";

(2) Numbers identifying the State and dealer, exhibitor, or research facility (i.e. 39–AB); and

(3) Numbers identifying the animal (i.e. 82488).

(c) Such tags shall be serially numbered and there shall be no duplication of numbers by any one dealer, exhibitor, or research facility, within a consecutive 5-year period.

§ 2.52 How to obtain tags.

Dealers, exhibitors, or research facilities may obtain, at their own expense, official tags from commercial tag manufacturers.[2] At the time the dealer, exhibitor, or research facility is issued a license or is registered, the Department will assign identification letters and numbers and inform them of the identification letters and numbers to be used on the official tags.

§ 2.53 Use of tags.

Official tags obtained by a dealer, exhibitor, or research facility, shall be applied to dogs or cats in the manner set forth in § 2.50 and in as near consecutive numerical order as possible. No tag number shall be used to identify more than one animal. No number shall be repeated within a consecutive 5-year period.

§ 2.54 Lost tags.

Each research facility, dealer, or exhibitor shall be held accountable for all official tags acquired. In the event an official tag is lost from the neck of a dog or cat while in the possession of a research facility, dealer, or exhibitor, a diligent effort shall be made to locate and reapply such tag to the proper animal. If the lost tag is not located, the research facility, dealer, or exhibitor shall affix another official tag to the animal in the manner prescribed in § 2.50, and make a notation of the tag number on the official records.

§ 2.55 Removal and disposal of tags.

(a) When a dog or cat wearing or identified by an official tag arrives at a research facility, the facility may continue to use such tag to identify the dog or cat or the research facility may replace the tag as indicated in § 2.50(e). All tags removed by a research facility shall be retained and disposed of as indicated in this section.

(b) If a dealer, exhibitor, or research facility finds it necessary to euthanize a live dog or cat to which is affixed or which is identified by an official tag, or upon the death of such dog or cat from other causes, the dealer, exhibitor, or research facility shall remove and retain such tag for the required period.

(c) All official tags removed and retained by a dealer, exhibitor, or research facility shall be held until called for by a Veterinary Services representative or for a period of 1 year.

(d) When official tags are removed from animals for disposal such tags must be disposed of in a manner to preclude their reuse as animal identification. No animal identification number shall be used within any consecutive 5-year period following its previous use.

Subpart F—Stolen Animals

§ 2.60 Prohibition on the purchase, sale, use, or transportation of stolen animals.

Any person subject to the Act shall not buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal.

Subpart G—Records

§ 2.75 Dealers and exhibitors.

(a)(1) Every dealer and exhibitor shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his possession or under his control, or which is transported, euthanized, sold, or otherwise disposed of by such dealer or exhibitor. Such records shall include any offspring born of any animal while in his possession or under his control:

(i) The name and address of the person from whom such dog or cat was purchased or otherwise acquired whether or not such person is required to be licensed or registered under the Act;

(ii) The USDA license or registration number of such person if licensed or registered under the Act;

(iii) The vehicle license number and State, and the drivers license number and State of such person if they are not licensed or registered under the Act;

(iv) The name and address of the person to whom such dog or cat was sold or otherwise disposed of and their license or registration number if licensed or registered under the Act;

(v) The date such dog or cat was acquired or disposed of, including by euthanasia;

(vi) The official USDA tag number or tattoo assigned to such dog or cat pursuant to §§ 2.50 and 2.54;

(vii) A description of each dog or cat which shall include:

(A) The species and breed or type;

(B) The sex;

(C) Date of birth (if known) or approximate age;

(D) The color and any distinctive markings;

(viii) The method of transportation including the name of the initial commercial carrier or intermediate handler or if a privately owned conveyance is used to transport the dog or cat, the name of the owner of such privately owned conveyance.

(ix) The date and method of disposition of such dog or cat, e.g., sale, death, euthanasia, or donation.

[2] A list of the commercial manufacturers who produce such tags and are known to the Department may be obtained from the Area Veterinarian in Charge. Any manufacturer who desires to be included in such a list should notify the Deputy Administrator.

(2) Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by dealers and exhibitors upon which to make, keep, and maintain the information required by paragraph (a)(1) of this section concerning dogs and cats except as provided in § 2.79.

(3) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section and § 2.79.

(4) One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat sold or otherwise disposed of by a dealer or exhibitor: *Provided, however:* That information which indicates the source and date of acquisition of such dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by (a)(1) of this section shall be retained by the dealer or exhibitor.

(b)(1) Every dealer and exhibitor shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his possession or under his control, including any offspring born of such animals while in his possession or under his control, transported, or sold, euthanized, or otherwise disposed of:

(i) The name and address of the person from whom such animals were purchased or otherwise acquired;

(ii) The USDA license or registration number if licensed or registered under the Act;

(iii) The name and address of the person to whom sold or otherwise disposed of;

(iv) The date of such purchase, acquisition, sale, or disposal of such animal(s);

(v) The species of such animal(s);

(vi) The number of such animals.

(2) Record of Animals on Hand (other than dogs and cats) (VS Form 18–19) and Record of Acquisition, Disposition, or Transport of Animals (other than dogs and cats) (VS Form 18–20) are forms which may be used by dealers and exhibitors upon which to keep and maintain the information required by paragraph (b)(1) hereof concerning animals other than dogs and cats except as provided in § 2.79.

(3) One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal(s) other than a dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal other than a dog or cat sold or otherwise disposed of by a dealer or exhibitor; *Provided, however:* That information which indicates the source and date of acquisition of any animal other than a dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraph (b)(1) of this section shall be retained by the dealer or exhibitor.

§ 2.76 Research facilities.

(a) Every research facility shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning each live dog or cat purchased or otherwise acquired, owned, held, or otherwise in their possession or under their control, transported, euthanized, sold, or otherwise disposed of by such research facility. Such records shall include for any offspring born of any animal while in the research facility's possession or under its control:

(1) The name and address of the person from whom such dog or cat was purchased or otherwise acquired whether or not such person is required to be licensed or registered under the Act;

(2) The USDA license or registration number if such person is licensed or registered under the Act;

(3) The vehicle license number and State and the driver's license number and State of such person if they are not licensed or registered under the Act;

(4) The date of acquisition of each dog or cat;

(5) The official USDA tag number or tattoo assigned to each dog or cat pursuant to §§ 2.50 and 2.54;

(6) A description of each dog or cat which shall include:

(i) The species and breed or type of animal;

(ii) The sex;

(iii) The date of birth (if known) or approximate age;

(iv) The color and any distinctive markings.

(7) Any identification number or mark assigned to each dog or cat by such research facility.

(b) In addition to the information required to be kept and maintained by every research facility concerning each live dog or cat, pursuant to paragraph (a) of this section, every research facility transporting, selling, or otherwise disposing of any live dog or cat to another person, shall make and maintain systems of records or forms which fully and correctly disclose the following information.

(1) The name and address of the receiver to whom such live dog or cat is transported, sold, or otherwise disposed of;

(2) The date of such transportation, sale, euthanasia, or other disposition; and

(3) The method of transportation, including the name of the initial commercial carrier or intermediate handler, or if a privately owned conveyance is used to transport the dog or cat, the name of the owner of such privately owned conveyance.

(c)(1) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) and Record of Dogs and Cats on Hand (VS Form 18–5) are forms which may be used by research facilities upon which to keep and maintain the information required by paragraph (a) of this section.

(2) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1), and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by research facilities upon which to keep and maintain the information required by paragraph (b) of this section.

(d) One copy of the record containing the information required by paragraphs (a) and (b) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility: *Provided, however:* That information which indicates the source and date of acquisition of any dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraphs (a) and (b) of this section shall be retained by the research facility.

§ 2.77 Operators of auction sales and brokers.

(a) Every operator of an auction sale or broker shall make, keep, and

maintain systems of records or forms which fully and correctly disclose the following information concerning each animal consigned for auction or sold, whether or not a fee or commission is charged:

(1) The name and address of the person who owned or consigned the animal(s) for sale;

(2) The name and address of the buyer or consignee who received the animal;

(3) The USDA license or registration number of the persons selling, consigning, buying, or receiving the animals if licensed or registered under the Act;

(4) The date of the consignment;

(5) The official USDA tag number or tattoo assigned to the animal pursuant to §§ 2.50 and 2.54;

(6) A description of the animal which shall include:

(i) The species and breed or type of animal;

(ii) The sex of the animal;

(iii) The color and any distinctive markings on the animal.

(7) The auction sales number or records number assigned to the animal.

(b) One copy of the record containing the information required by paragraph (a) of this section shall be given to the consignor of each animal, one copy of the record shall be given to the purchaser of each animal: *Provided, however:* That information which indicates the source and date of consignment of any animal is not required to appear on the copy of the record given the purchaser of any animal. One copy of the record containing the information required by paragraph (a) of this section shall be retained by the operator of such auction sale, or broker, for each animal sold by the auction sale or broker.

§ 2.78 Carriers and intermediate handlers.

(a) In connection with all live animals accepted for shipment on a C.O.D. basis or other arrangement or practice under which the cost of such animal or the transportation of such animal is to be paid and collected upon delivery of the animal to the consignee, the accepting carrier or intermediate handler, if any, shall keep and maintain a copy of the guarantee in writing of the consignor of such shipment for the payment of transportation charged for any animal not claimed as provided in § 2.80, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for out-of-pocket expenses incurred for the care, feeding, and storage of such animal. The carrier or intermediate handler at destination shall also keep and maintain a copy of the shipping document containing the time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee, as provided in § 2.80.

(b) In connection with all live dogs, cats, or nonhuman primates delivered for transportation, in commerce, to any carrier or intermediate handler, by any dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government, the accepting carrier or intermediate handler shall keep and maintain a copy of the health certification completed as required by § 2.79, tendered with each such live dog, cat, or nonhuman primate.

§ 2.79 Health certification and identification.

(a) No dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government shall deliver to any intermediate handler or carrier for transportation, in commerce, any dog, cat, or nonhuman primate unless such dog, cat, or nonhuman primate shall be accompanied by a health certificate executed and issued by a licensed veterinarian. Such health certificate shall state that—

(1) The licensed veterinarian inspected such dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of such dog, cat, or nonhuman primate for transportation; and

(2) When so inspected that such dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal(s) or other animals or endanger public health.

(b) The Secretary may provide exceptions to the health certification requirement on an individual basis for animals shipped to a research facility for purposes of research, testing, or experimentation when the research facility requires animals not eligible for such certification. Such request should be addressed to the Deputy Administrator, USDA, APHIS, VS, Room 756, FCB, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) No intermediate handler or carrier to whom any live dog, cat, or nonhuman primate is delivered for transportation by any dealer, research facility, exhibitor, broker, operator of an auction sale, or department, agency, or instrumentality of the United States or any State or local government shall receive such live dog, cat, or nonhuman primate for transportation, in commerce, unless and until it is accompanied by a health certificate issued by a licensed veterinarian pursuant to paragraph (a) of this section, or an exemption issued by the Secretary pursuant to paragraph (b) of this section.

(d) The U.S. Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used for health certification by a licensed veterinarian as required by this section.

§ 2.80 C.O.D. shipments.

(a) No carrier or intermediate handler shall accept any animal for transportation, in commerce, upon any C.O.D. or other basis where the cost of the animal or the cost for any such transportation or any other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee, unless the consignor guarantees in writing the payment of all transportation, including any return transportation, if such shipment is unclaimed or the consignee cannot be notified in accordance with paragraphs (b) and (c) of this section, including reimbursing the carrier or intermediate handler for all out-of-pocket expenses incurred for the care, feeding, and storage or housing of such animal.

(b) Any carrier or intermediate handle receiving any animal at destination on a C.O.D. or other basis where the cost of the animal or the cost for any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee shall attempt to notify such consignee for a period of 24 hours after arrival of the animal at the animal holding area of the terminal cargo facility, at least once every 6 hours during that period. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded by the carrier or intermediate handler on the shipping document and a copy thereof, accompanying the C.O.D. shipment. If the consignee cannot be notified of the C.O.D. shipment within 24 hours after arrival of the shipment, the carrier or intermediate handler shall return the animal to the consignor, or to whomever the consigner has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and so notify the consignor. Any carrier or intermediate handler which has notified a consignee of the arrival of a C.O.D. or other

shipment of an animal, where the cost of the animal, or the cost for any transportation, or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee, which is not claimed by such consignee within 48 hours from the time of such notification, shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and so notify the consignor.

(c) It shall be the responsibility of any carrier or intermediate handler to provide proper care, feeding, and storage or housing for any animal accepted for transportation, in commerce, under a C.O.D. or other arrangement where the cost of the animal or the cost of any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal until the consignee accepts shipment at destination or until returned to the consignor or his designee should the consignee fail to accept delivery of the animal or the consignee could not be notified as prescribed in paragraph (b) of this section.

(d) Nothing in this section shall be construed as prohibiting any carrier or intermediate handler from requiring any additional guarantee than that required in paragraph (a) of this section for the payment of the cost of any transportation or out-of-pocket or other incidental expenses incurred in the transportation of any animal.

§ 2.81 Records, disposition.

(a) No dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall, within a period of one year from the making thereof, destroy or dispose of, without the consent in writing of the Deputy Administrator, any books, records, documents, or other papers required to be kept and maintained under this part.

(b) The records required to be kept and maintained under this part shall be held for at least one year after such animal is euthanized or disposed of and for such period in excess of this period as necessary to comply with any other Federal, State, or local law. Whenever the Deputy Administrator notifies a dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, such dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall hold such records until their disposition is authorized by the Deputy Administrator.

Subpart H—Compliance With Standards and Holding Period

§ 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale and research facility shall comply in all respects with the regulations set forth in Part 2 and the standards set forth in Part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals: *Provided, however:* That exceptions to the standards in Part 3 may be made for research facilities only when such exceptions are specified in the research protocol; are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee.

(b) Each carrier and intermediate handler shall comply in all respects with the regulations in Part 2 and the standards in Part 3 setting forth the conditions and requirements for the humane transportation of animals in commerce and their handling, care, and treatment in connection therewith.

§ 2.101 Holding period.

(a) Any live dog or cat acquired by a dealer [3] or exhibitor shall be held by him, under his supervision and control, for a period of not less than 5 business days after acquisition of such animal: *Provided, however:* That live dogs or cats which have completed a 5-day holding period with another licensed dealer or exhibitor may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor, excluding time in transit; live dogs or cats obtained from governmentally owned and operated pounds or shelters (i.e., city or county pounds or shelters) and that have completed at least a 5-day holding period at such pound or shelter, may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor, excluding time in transit; any dog or cat suffering from disease, emaciation, or injury may be destroyed by euthanasia prior to the completion of the holding period required by this section; any live dog or cat, 120 days of age or less, that was obtained from the person that bred and raised such dog or cat, may be exempted from the 5-day holding requirement and may be disposed of by dealers or exhibitors after a minimum holding period of 24 hours, excluding time in transit. Each subsequent dealer or exhibitor must also hold each such dog or cat for a 24 hour period excluding time in transit.

(b) During the period in which any dog or cat is being held as required by this section, such dog or cat shall be unloaded from any means of conveyance in which it was received, for feed, water, and rest, and handled, cared for, and treated in accordance with the standards set forth in Part 3, Subpart A, of this subchapter.

§ 2.102 Holding facility.

(a) If any dealer or exhibitor obtains the prior approval of the Area Veterinarian in Charge, he may arrange to have another person hold animals for the required period provided for in paragraph (a) of § 2.101: *Provided:* That such other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of his premises by a Veterinary Services representative during business hours; and the animals remain under the total control and responsibility of the dealer or exhibitor. Approval will not be given for a dealer or exhibitor holding a license as set forth in § 2.4 to have animals held for purposes of this section by another licensed dealer or exhibitor. Veterinary Services Form 18–9 shall be used for such approval.

(b) If any research facility or intermediate handler obtains prior approval of the Area Veterinarian in Charge, it may arrange to have another person hold animals: *Provided:* That, such other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of the premises by a Veterinary Services representative during business hours; the animals remain under total control and responsibility of the research facility or intermediate handler; and in the case of a research facility, a legally responsible official of the research facility agrees in writing that such other person or premises is a recognized animal site under their research facility registration. Veterinary Services Form 18–9 shall be used for such approval.

[3] An operator of an auction sale is not considered to have acquired a dog or cat which is sold through the auction sale.

Subpart I—Miscellaneous

§ 2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers.

Each dealer, exhibitor, research facility, intermediate handler, and carrier shall furnish to any Veterinary Services representative, any information concerning the business of the dealer, exhibitor, operator of an auction sale, research facility, intermediate handler or carrier which may be requested by such representative in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter. Such information shall be furnished within such reasonable time as may be specified in the request for such information.

§ 2.126 Access and inspection of records and property.

Each dealer, exhibitor, research facility, intermediate handler, or carrier, shall, during business hours, permit U.S Department of Agriculture representatives to enter its place of business, examine records required to be kept by the Act and the regulations in this part, make copies of such records, inspect such facilities, property and animals, as such representatives consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter, and take photographs to document conditions and/or areas of noncompliance in the facility. The use of a room, table, or other facilities necessary for the proper examination of such records and inspection of such property or animals shall be extended to such authorized representatives of the Secretary by the dealer, exhibitor, research facility, intermediate handler or carrier, or his agents and employees.

§ 2.127 Publication of names of persons subject to the provisions of this part.

Lists of persons licensed or registered, pursuant to the provisions of this part, shall be published periodically by Veterinary Services in the **Federal Register**. Such lists may be obtained upon request from the Area Veterinarian in Charge.

§ 2.128 Inspection for missing animals.

(a) Each dealer, exhibitor, research facility, intermediate handler and carrier shall, upon request, during business hours, permit, under the following conditions, police or other officers of law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter his/her place of business to inspect animals and records for the purpose of seeking animals that are missing:

(1) The police or other law officer shall furnish to the dealer, exhibitor, research facility, intermediate handler or carrier a written description of the missing animal and the name and address of its owner before making such search.

(2) The police or other law officer shall abide by all security measures required by the dealer, exhibitor, research facility, intermediate handler or carrier to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

(b) Such inspection for missing animals by law enforcement officers shall not extend to animals that are undergoing actual research or experimentation by a research facility as determined by such research facility.

§ 2.129 Confiscation and destruction of animals.

(a) If an animal being held by a dealer, exhibitor, intermediate handler, carrier, or by a research facility when it is no longer required by such research facility to carry out the research, test, or experiment for which it has been utilized, is found by a Veterinary Services representative to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, carrier, or operator of an auction sale, or research facility to comply with any provision of the regulations or the standards set forth in this subchapter, the Veterinary Services representative shall make a reasonable effort to notify the dealer, exhibitor, intermediate handler, carrier, or research facility of the condition of such animal(s) and request that the condition be corrected and that adequate care be given when necessary to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer, exhibitor, intermediate handler, carrier, or research facility refuses to comply with such request, the Veterinary Services representative may confiscate such animal(s) for care, treatment, or disposal as indicated in paragraph (b) of this section, if in the opinion of the Deputy Administrator the circumstances indicate such animal is in danger of harm.

(b) In the event that the Veterinary Services representative is unable to locate or notify the dealer, exhibitor, intermediate handler, carrier, or research facility as required in this section, the Veterinary Services representative shall contact a local police or other law officer to accompany him to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If in the opinion of the Deputy Administrator, the condition of the animal(s) cannot be corrected by such temporary care, the Veterinary Services representative shall confiscate the animals. Such confiscated animals may be placed with other licensees or registrants which comply with the standards and regulations, and can provide proper care, by sale or donation, or may be euthanized. Such costs as may be incurred shall be borne by the dealer, exhibitor, intermediate handler, carrier, or research facility from whom the animals were confiscated.

(c) Prior to making any decision regarding the destruction of any marine mammal, or of any species designated by the Department of the Interior or the International Union for the Conservation of Nature and Natural Resources as an endangered species, the Deputy Administrator shall, when possible, consult with representatives of the Fish and Wildlife Service, Department of the Interior, the National Marine Fisheries Service, Department of Commerce, and the International Union for the Conservation of Nature and Natural Resources.

§ 2.130 Minimum age requirements.

No dog or cat shall be delivered by any person to any carrier or intermediate handler for transportation, in commerce, except to a registered research facility, unless such dog or cat is at least eight (8) weeks of age and has been weaned.

§ 2.131 Handling of animals.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm.

(2) Care shall be exercised to avoid harm to the handlers of such animals and to avoid unnecessary harm to the animals.

(3) Physical abuse or deprivation of food or water shall not be used to train, work, or otherwise handle animals.

(b)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible and knowledgeable uniformed employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure safety to the animals and to the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

§ 2.132 Procurement of random source dogs and cats, dealers.

A class "B" dealer may obtain live random source dogs and cats only from State, county, or city owned and operated pounds or shelters. Class "B" dealers may not obtain live random source dogs and cats from nongovernment pounds or shelters, or from individuals who have not bred and raised such dogs and cats on their own premises. Nonrandom source dogs and cats may be obtained from persons who have bred and raised such dogs and cats on their own premises.

Done at Washington, DC, this 24th day of March 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 87-6833 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-34-M

federal register

Tuesday
March 31, 1987

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 904
50 CFR Parts 219 and 621
Civil Procedure Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

50 CFR Parts 219 and 621

[Docket No. 41157-6187]

Civil Procedure Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA publishes final regulations revising and consolidating its procedures governing administrative proceedings for the assessment of civil penalties, for the imposition of permit sanctions and permit denials for enforcement-related reasons, for the review and appeal of written warnings, and for the release or forfeiture of seized property. The regulations revise those published as interim final rules on December 18, 1981 (46 FR 61644), as amended on May 10, 1982 (47 FR 19990); January 6, 1984 (49 FR 1036); January 11, 1984 (49 FR 1464); and April 1, 1985 (50 FR 12781). These revisions will make it easier for members of the public to use the regulations.

EFFECTIVE DATE: March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Linda I. Marks, 202–673–5220.

SUPPLEMENTARY INFORMATION:

Discussion

These regulations revise and consolidate NOAA's civil procedure regulations previously published as interim final rules. The regulations govern civil penalty, property forfeiture, and permit sanction proceedings conducted under the various statutes NOAA enforces, including the Magnuson Fishery Conservation and Management Act, the Lacey Act Amendments of 1981, the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Northern Pacific Halibut Act of 1982.

New Subpart A of Part 904 sets forth the scope of the regulations, defines a number of terms used throughout the Part, and consolidates procedures governing the filing and service of documents that were previously scattered throughout Subparts B through E. "Permit holder" and "vessel owner" are defined and used throughout the regulations; the definitions for "affected permit" and "affected vessel" are deleted since the terms are no longer used. In § 904.3(a) (former § 904.100(b)(1)), language was added to state that service of a document is effective when mailed to a last-known address; in § 904.3(c) (former §§ 904.100(b)(1) and 904.220(d)), provision is made for service and/or filing by electronic mail. A provision was added to § 904.3(e) (former § 904.100(b)(2)) to exclude Saturdays, Sundays, and legal holidays from time periods less than 11 days. This rule is identical to Rule 6(a) of the Federal Rules of Civil Procedure. Former § 904.100(d), regarding exceptions to particular regulations, is removed.

Subpart B sets forth procedures applicable to civil penalty assessments. Language was added to § 904.102(e) to state that NOAA ("Agency") counsel will promptly forward to the Office of Administrative Law Judges requests for hearing. In § 904.105, a clause was removed concerning when payment of a penalty is due in situations where the respondent seeks judicial review. Section 904.106(b) was revised to provide that requests to compromise, modify, remit, or mitigate a penalty should be sent to Agency counsel. The first two sentences of paragraph (c) of § 904.106 were removed, as was former paragraph (d). Section 904.107 is replaced with a section on joint and several respondents. In § 904.108, concerning ability to pay, a requirement was added to submit financial information to NOAA counsel 15 days before a scheduled hearing.

Subpart C governs the conduct of hearings and appeals. Section 904.202 (Use of gender and number) is removed. New § 904.202 provides that discovery requests and answers need not be filed with the Administrative Law Judge (ALJ). In § 904.204 (former § 904.206), a subsection was added as notice to respondents that an ALJ has the power to assess a penalty *de novo*. Five days were added to answer motions or other pleadings, and to reply to answers. Sections 904.240 through 904.245 were rewritten to spell out discovery procedures with more particularity. However, the primary discovery method will be a submission on issues ordered by the ALJ, and parties will have to apply to the ALJ for all other forms of discovery. Section 904.250 was amended to extend the time for notice of hearing to 20 days. Provision was also made for testimony to be taken via telephone. Paragraphs (d) and (e) in § 904.251 are from former § 904.252, and add the requirement that a party having documents translated into English must provide the opposing party with the name of the translator. Paragraph (f), on proof of foreign law, is new and is taken from the Federal Rules of Civil Procedure. In § 904.252, a provision is added that whenever possible, interpreters used at hearings should be certified by the federal courts. Section 904.262 is former § 904.263, and adds paragraph (c) on retention of physical evidence by other than the ALJ. Paragraph (c) was added to § 904.270 (Record of decision) to clarify that post-hearing exhibits are not part of the record unless specifically admitted. Section 904.272 (Petition for reconsideration) is the former § 904.261; the time to reply to a petition for reconsideration is increased from 10 to 15 days. Section 904.273 is the former § 904.272, with additions. In paragraph (d), a sentence is added specifying that no new evidence may be submitted on review. In paragraph (f), the time to reply was increased from 21 to 30 days. Paragraph (h) was amended to specify that the Administrator, if he grants a petition for review, must allow briefs to be filed before deciding the case. Paragraph (i) was added on service and the effective date of the Administrator's decision.

Subpart D covers procedures for permit sanctions and denials for enforcement-related reasons. Section 904.306 was deleted due to a revised delegation of authority within NOAA that makes permit sanction proceedings parallel with civil penalty proceedings. This means the ALJ will now issue an Initial Decision, which will be subject to discretionary review by the Administrator of NOAA. In § 904.322, the standard for interim action was modified to "protect" marine resources instead of to "prevent substantial harm" to the resources.

Subpart E governs the issuance, review, and appeal of written warnings. Section 904.403 (former § 904.420) was amended so that a written warning issued by an enforcement agent may be appealed first to a Regional Attorney, then to the Assistant General Counsel for Enforcement and Litigation (AGC/EL); however, a written warning issued by a Regional Attorney (or Staff attorney) may be appealed directly to the AGC/EL.

Subpart F provides procedures for the disposition of seized property. One revision permits a certified check to be used instead of a bond when a person files a claim for seized property (§ 904.504(b)(3)(ii)). New § 904.508 is the former Subpart C of 50 CFR Part 219, and governs the disposal of forfeited or abandoned property.

Response to Public Comments

Public comments were received when Subparts D and E were first published in

the **Federal Register**. NOAA responds to them as follows:

Subpart D—Permit Sanctions and Denials. One commenter stated that § 904.301(b) (former § 904.302(b)) is unfair and of "questionable legality under due process." NOAA disagrees. That section provides that a permit sanction may be imposed against another NOAA permit held or applied for by the same holder. This provision notifies all NOAA permit holders and applicants that their conduct with regard to all of NOAA's programs will be considered in making a determination on whether to sanction or deny a permit. Section 904.301(b) does not require NOAA to sanction or deny a permit because a permit holder violated a regulation or failed to pay a penalty, it merely gives NOAA the option to do so. This is consistent with NOAA's policy of considering the entire violation history of a permit holder, much like a judge looks at a criminal defendant's record at sentencing.

The comment was made that § 904.303 (former § 904.304), which authorizes the Agency to issue notice to a permit applicant that NOAA intends to deny a permit, is invalid because section 204(b)(12) of the Magnuson Fishery Conservation and Management Act (MFCMA) (16 U.S.C. 1824(b)(12)) does not authorize denial of permits as a sanction. Express statutory authority to grant permits provides implicit authority to deny them. NOAA's permits are not granted as a matter of right, and are issued under many statutes other than the MFCMA.

Comment was also made that the interim action procedures found at § 904.322 are unconstitutional because the standard of proof (probable cause) and the method of submitting information to the ALJ do not meet due process requirenents. It is constitutional to require only a showing of probable cause in order to take interim, or emergency action. This procedure would only be used in limited circumstances and not in lieu of a full-fledged "trial-type" hearing. A more complete administrative hearing on the Notice of Permit Sanction or Notice of Intent to Deny Permit would still occur, and in fact, would be expedited under § 904.322(c).

The same commenter noted that NOAA cannot extend use of Subpart C to permit sanction proceedings because under the MFCMA, subpoenas (authorized under § 904.245) only apply to civil penalty proceedings. Section 904.245 clearly states that subpoenas may be issued "as authorized by . . . statute. . . ." NOAA has not attempted to set forth all situations in which subpoenas are authorized all the statutes it enforces.

Subpart E—Written Warnings. NOAA received two comments when Subpart E was published. One commenter was concerned with the regulations' "additive approach." This comment apparently refers to § 904.401 (former § 904.410), which provides that a written warning *may* be used "as a basis for dealing more severely with a subsequent offense." The suggestion was made to treat warnings as prior offenses only for a period of one year, and only for subsequent incidents at the same location. NOAA rejected this suggestion. Treating a written warning as a prior offense is within NOAA's discretion, and NOAA does not wish to place limits on its discretionary power.

Another commenter urged that the time afforded to seek review of a written warning (90 days) and for NOAA to withdraw the warning and commence civil or criminal proceedings (120 days) be made the same. NOAA has retained the ability to upgrade a warning to a more serious sanction because very often at the time a violation is detected an enforcement officer does not have before him a violator's enforcement record, or may discover additional facts that show a written warning is not warranted. Having different time limits is not unfair. Should NOAA withdraw a written warning and then issue a Notice of Violation and Assessment based on the same set of facts, the respondent has the opportunity to present information to challenge the Notice.

Classification

Under Executive Order 12291, NOAA has decided these regulations are not "major" because they are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required, and no preliminary or final analysis has been prepared.

Section 553(b)(A) of the Administrative Procedure Act (APA) exempts rules of agency practice and procedure such as this Part from the requirements of notice and opportunity for public comment. Therefore, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final Regulatory Flexibility Analysis has been prepared.

These regulations have been categorically determined to have no significant effect on the quality of the human environment under NOAA Directive 02-10. Therefore, no Environmental Assessment has been prepared.

Regulations governing civil and administrative actions are exempt from the requirements of the Paperwork Reduction Act (5 CFR 1320.3(c)). They contain no information collection requests that are subject to the Act.

Under section 553(d) of the APA, procedural rules such as this part may be and are being made effective upon publication.

List of Subjects

15 CFR Part 904

Administrative practice and procedure, Seizures, Forfeitures, Penalties, Fisheries, Fishing, Fishing vessels, Permits, Sanctions.

50 CFR Part 219

Administrative practice and procedure, Seizures, Forfeitures.

50 CFR Part 621

Administrative practice and procedure.

Dated: March 24, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR Chapter IX, and 50 CFR Chapters II and VI are amended as follows.

1. 15 CFR Part 904 is revised to read as follows:

PART 904—CIVIL PROCEDURES

Subpart A—General

Sec.

Subpart B—Civil Penalties

Subpart C—Hearing and Appeal Procedures

General

Sec.

Discovery

Hearings

Post-Hearing

Decision

Subpart D—Permit Sanctions and Denials

General

Sanctions for Nonpayment of Penalties

Sanctions for Violations

Subpart E—Written Warnings

Subpart F—Seizure and Forfeiture Procedures

Authority: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 1021–1032; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971i; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2412; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916*l*; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 4201 *et seq.*

Subpart A—General

§ 904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in the part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

(1) Antarctic Conservation Act of 1978, 16 U.S.C. 2401–2412;

(2) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444;

(3) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;

(4) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(5) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971i;

(6) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;

(7) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h;

(8) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;

(9) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175;

(10) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;

(11) Land Remote-Sensing Commercialization Act of 1981, 15 U.S.C. 4201 *et seq.*;

(12) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;

(13) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;

(14) Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431–1439;

(15) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;

(16) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1032;

(17) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;

(18) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631–3644;

(19) Sponge Act, 16 U.S.C. 781 *et seq.*;

(20) Tuna Conventions Act of 1950, 16 U.S.C. 951–961; and

(21) Whaling Convention Act of 1949, 16 U.S.C. 916–916*l*.

The procedures set forth in this part are intended to apply to administrative proceedings under these and later-enacted statutes administered by NOAA.

§ 904.2 Definitions.

Unless the context otherwise requires, or as otherwise noted, terms in this part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

Administrator means the Administrator of NOAA or a designee.

Agency means the National Oceanic and Atmospheric Administration (NOAA).

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Applicant means any person who applies or is expected to apply for a permit.

Citation means a written warning (see section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

Decision means an initial or final decision of the Judge.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

Final administrative decision means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Forfeiture includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the Administrator under a statute.

Initial decision means a decision of the Judge which, under applicable statute and regulation, is subject to review by the Administrator, but which becomes the final administrative decision in the absence of such review.

Judge means Administrative Law Judge.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

Party means the respondent and the Agency as represented by counsel; if they enter an appearance, a joint and several respondent, vessel owner, or permit holder; and any other person allowed to participate under § 904.204(a).

Payment agreement means any promissory note, security agreement, settlement agreement, or other contract specifying the terms according to which a permit holder agrees to pay a civil penalty.

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

Permit holder means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

Sanction means suspension, revocation, or modification of a permit (see § 904.320).

Vessel owner means the owner of any vessel that is liable *in rem* for any civil penalty under this Part, or whose permit may be subject to sanction as a result of civil penalty proceedings under this part.

Written warning means a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person.

§ 904.3 Filing and service of documents.

(a) Whenever this part requires service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served or other representative. Refusal by the person to be served, or his or her agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. Service will be considered effective when the document is mailed to an addressee's last known address.

(b) Any documents or pleadings filed or served must be signed: (1) By the person or persons filing the same, (2) by an officer thereof if a corporation, (3) by an officer or authorized employee if a government instrumentality, or (4) by an attorney or other person having authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or as otherwise shown for government-franked mail); or (if not mailed) as of the date actually delivered in person; or as shown by electronic mail transmission.

(d) Time periods begin to run on the day following the date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

(e) If an oral or written application is made to NOAA within 10 days after the expiration of a time period established in this part for the required filing of documents or other papers, NOAA may permit a late filing if NOAA finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as specifically provided in this part, or by order of an Administrative Law Judge (Judge) under this part, no requests for an extension of time may be granted.

Subpart B—Civil Penalties

§ 904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil penalties under the statutes cited in § 904.1(c).

§ 904.101 Notice of Violation and Assessment (NOVA).

(a) A NOVA will be issued by NOAA and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the permit holder or the vessel owner, if the holder or owner is not the respondent. The NOVA will contain: (1) A concise statement of the facts believed to show a violation; (2) a specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated; (3) the findings and conclusions upon which NOAA bases the assessment; and (4) the amount of the civil penalty assessed. The NOVA will also advise of the respondent's rights upon receipt of the NOVA, and will be accompanied by a copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

§ 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under paragraph (e) of this section;

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes final in accordance with § 904.104. The procedures set forth in paragraphs (a)(2), (3), (4), and (5) may also be exercised by the permit holder or vessel owner.

(b) The respondent, the permit holder, or the vessel owner may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying Agency counsel at the telephone number or address specified in the NOVA. If amendment or modification is sought, Agency counsel will either amend the NOVA or decline to amend it, and so notify the respondent, permit holder, or vessel owner, as appropriate.

(c) The respondent, permit holder, or vessel owner may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or

she determines that the requester could, exercising reasonable diligence, respond within the 30-day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (c) of this section.

(e) If the respondent, the permit holder, or the vessel owner wishes a hearing, the request must be dated and in writing, and must be served either in person or mailed to the address specified in the NOVA. The requester must either attach a copy of the NOVA or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(f) Any denial, in whole or in part, of any request under this section that is based upon untimeliness will be in writing.

(g) Agency counsel may, in his or her discretion, treat any communication from a respondent, a permit holder, or vessel owner as a request for a hearing under paragraph (e) of this section.

§ 904.103 Hearing and administrative review.

(a) Any hearing request under § 904.102(e) is governed by the hearing and review procedures set forth in Subpart C.

(b) In any hearing held in response to a request under § 904.102(e), the Administrative Law Judge (Judge) will render an initial decision. Any party to the hearing may seek the Administrator's review of the Judge's initial decision, subject to the provisions of Subpart C.

§ 904.104 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.102(e), the NOVA becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.102(e), the date of the final administrative decision is as provided in Subpart C.

§ 904.105 Payment of final assessment.

(a) Respondent must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under § 904.104 or Subpart C. Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States," or as otherwise directed.

(b) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under § 904.106.

§ 904.106 Compromise of civil penalty.

(a) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition, except as stated in paragraph (d) of this section.

(b) The compromise authority of NOAA under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of NOAA or in response to a request by the alleged violator or other interested person. Any such request should be sent to Agency counsel at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(d) *Exception.* NOAA will not compromise, modify, or remit a civil penalty imposed, or subject to imposition, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the penalty is pending in a court of the United States.

§ 904.107 Joint and several respondents.

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each respondent is liable for the entire penalty, but no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one respondent is considered a request by the other respondents. Agency counsel, having received a hearing request from one respondent, will send a copy of it to the other joint and several respondents in the case.

(c) A decision by the Judge or the Administrator after a hearing requested by one joint and several respondent is binding on all parties and on all other joint and several respondents, whether or not they entered an appearance.

§ 904.108 Factors considered in assessing penalties.

(a) Factors to be taken into account in assessing a penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior offenses, and ability to pay; and such other matters as justice may require. NOAA will take into account a respondent's ability to pay when assessing a civil penalty for a violation of any of the statutes NOAA administers.

(b) NOAA may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than a cost of doing business. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) If a respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to NOAA. NOAA will not consider a respondent's inability to pay unless the respondent, upon request, submits such financial information as Agency counsel determines is adequate to evaluate the respondent's financial condition. Depending on the circumstances of the case, Agency counsel may require the respondent to complete a financial information request form, answer written interrogatories, or submit independent verification of his or her financial information. If the respondent does not submit the requested financial information, he or she will be presumed to have the ability to pay the penalty.

(d) Financial information relevant to a respondent's ability to pay includes, but is not limited to, the value of respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, prior and anticipated profits, expected cash flow, and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. NOAA's consideration of a respondent's ability to pay does not preclude an assessment of a penalty in an amount that would

cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel as soon after receipt of the NOVA as possible. If a respondent has requested a hearing on the offense alleged in the NOVA and wants his or her inability to pay considered in the initial decision of the Judge, verifiable financial information must be submitted to Agency counsel at least 15 days in advance of the hearing. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess *de novo* a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an initial decision if the financial information was not previously presented by the respondent to the Judge at the hearing.

Subpart C—Hearing and Appeal Procedures

General

§ 904.200 Scope and applicability.

(a) This Subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final decisions of NOAA in administrative proceedings involving alleged violations of the laws cited in § 904.1(c) and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

(b) Subject to the administrative direction of the Chief Administrative Law Judge, each Administrative Law Judge (Judge) assigned by the Chief Administrative Law Judge is delegated authority to make the initial or final decision of the Agency (whichever is made appropriate by regulation outside this subpart) in proceedings subject to the provisions of this subpart, and to take actions to promote the efficient and fair conduct of hearings as set out in this subpart. The Judge has no authority to rule on challenges to the validity of regulations promulgated by the Agency.

(c) This subpart is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings, the right to which is provided by other authority.

§ 904.201 Case docketing.

Each request for hearing promptly upon its receipt for filing in the Office of Administrative Law Judges will be assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed in conformance with § 904.3 directly with the Judge, with copies served on all other parties. Pleadings, papers, and other documents pertaining to administrative review under § 904.273 must be filed with the Administrator, with copies served on all other parties.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

§ 904.203 Appearances.

A party may appear in person or by or with counsel or other representative.

§ 904.204 Duties and powers of Judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation (such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the decision and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(b) Schedule the time, place, and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(c) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness who refuses to answer a question ruled to be proper;

(d) Administer oaths and affirmations to witnesses;

(e) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240(d);

(f) Rule on motions, procedural requests, and similar matters;

(g) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(h) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(i) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(j) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(k) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; *Provided, that* the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(l) For stated good reason(s), assess a penalty *de novo* without being bound by the amount assessed in the NOVA;

(m) Prepare and submit a decision or other appropriate disposition document and certify the record;

(n) Award attorney fees and expenses as provided by applicable statute or regulation; and

(o) Grant preliminary or interim relief.

§ 904.205 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the

Judge will rule on the matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Office of Administrative Law Judges and a copy served upon each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(a).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, the original signed in ink or as otherwise verified for electronic mail; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, pica type, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 15 days of service of an answer. The Judge has discretion to dispense with the reply. No further responses are permitted.

§ 904.207 Amendment of pleadings or record.

The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading. The Judge has discretion to permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

§ 904.208 Extensions of time.

If appropriate and justified, and as provided in § 904.3(e), the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

§ 904.209 Expedited proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the proceeding. A motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits may not be scheduled with less than three days' notice, unless all parties consent to an earlier hearing.

§ 904.210 Summary decision.

(a) At any time after a proceeding begins, a party may move for or the Judge on his or her own motion may grant a summary decision disposing of all or part of the issues.

(b) A summary decision may be rendered if the entire record shows as to the issue(s) under consideration: (1) That there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

§ 904.211 Failure to appear.

(a) If a party fails to appear after proper service of notice, the hearing may proceed. A notation of failure to appear will be made in the record, and the hearing may be conducted with the parties then present, or may be terminated if the Judge determines that proceeding with the hearing will not aid the decisional process.

(b) The Judge will place in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(c) The Judge may deem a failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision on the record.

§ 904.212 Dismissal for failure to prosecute or defend.

Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue an order to show cause why the case should not be dismissed or disposed of adversely to that party's interest, or make such order as is necessary for the just and expeditious resolution of the case, including dismissal of the matter from the docket for failure to prosecute or defend. Such dismissal or other order is subject to §§ 904.272 and 904.273.

§ 904.213 Settlements.

If settlement is reached before the Judge has certified the record, the Judge may require the submission of a copy of the settlement agreement to assure that the Judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served upon all parties.

§ 904.215 Consolidation.

The Judge may order two or more proceedings that involve substantially the same parties or the same issues consolidated and/or heard together.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, arrange a telephone conference and, where appropriate, record such telephone conference, or direct the parties to appear for a conference to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(7) Such other matters as may aid in the disposition of the proceeding.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference.

Discovery

§ 904.240 Discovery generally.

(a) *Preliminary Position on Issues and Procedures.* Prior to hearing the Judge will ordinarily require from the parties a written submission stating their preliminary positions on legal and factual issues and procedures, listing potential witnesses and summarizing their testimony, and listing exhibits. This document, which must be served on all other parties, will normally obviate the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. See also § 904.212. A party has the affirmative obligation to supplement the submission as new information becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission.

(c) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions.* Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery.* The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general.* As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation: Materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking discovery has a substantial need for the materials in preparation of his or her case, and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation: Experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply.* If a party fails to comply with any subpoena or order concerning discovery, the Judge may, in the interest of justice:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the order or subpoena are established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading, a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena;

(6) Render a decision of the proceeding against the party.

§ 904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking the deposition.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before a person appointed by the Judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, signed by the deponent, unless waived, and certified by the officer before whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript. See also § 904.252(c).

(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the Judge finds: (i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site; or (ii) that exceptional circumstances make it desirable, in the interest of justice, to allow the deposition to be used.

(3) If only part of a deposition is offered in evidence by a party, any party may introduce any other part.

§ 904.242 Interrogatories to parties.

(a) *Use at hearing.* If ordered by the Judge, any party may serve upon any other party written interrogatories. Answers may be used at hearing in the same manner as depositions under § 904.241(d).

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers

must be signed by the person making them and objections by the attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficent to specify such records and afford the party serving the interrogatories an opportunity to examine them.

§ 904.243 Admissions.

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter of which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the Judge on motion permits withdrawal or amendment of it for good cause shown.

§ 904.244 Production of documents and inspection.

(a) *Scope.* If ordered by the Judge, any party may serve on any other party a request to produce a copy of any document or specifically designated category of documents, or to inspect, copy, photograph, or test any such document or tangible thing in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth: (1) The items to be produced or inspected by item or by category, described with reasonable particularity, and (2) a reasonable time, place, and manner for inspection. The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

§ 904.245 Subpoenas.

(a) *In general.* Subpoenas for the attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute under which the proceeding is conducted.

(b) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition.

(c) *Motions to quash.* Any person to whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The Judge may quash or modify the subpoena.

(d) *Enforcement.* In case of disobedience to a subpoena, NOAA may request the Justice Department to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Hearings

§ 904.250 Notice of time and place of hearing.

(a) The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not, except in extraordinary circumstances, be held less than 20 days after service of the notice of hearing.

(b) In setting a place for hearing, the Judge will consider the convenience and costs of the parties, including but not limited to transportation costs and living expenses of witnesses, attorneys, and the Judge; place of residence of the respondent(s); scheduling of other hearings within the same region; and availability of facilities and court reporters.

(c) The Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues of material fact may be resolved by means of written materials and that efficient disposition of the proceeding can be made without oral hearing. For good cause, the Judge may also order that testimony of witnesses be taken by telephone.

§ 904.251 Evidence.

(a) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph may not be interpreted to diminish the powers and duties of the Judge under this subpart.

(b) All evidence that is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the proceedings, and hearsay evidence is not inadmissible as such.

(c) Formal exceptions to the rulings of the Judge are unnecessary. It is sufficient that a party, at the time of the ruling, makes known the action that it desires the Judge to take or its objection to an action taken, and the grounds therefor. Rulings on each objection must appear in the record.

(d) In any case involving a charged violation of law in which the party charged has admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(e) Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

(f) A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

§ 904.252 Witnesses.

(a) Any witness not a party may have personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(b) Witnesses who are not parties may be excluded from the hearing room prior to the taking of their testimony.

(c) Witnesses other than NOAA employees subpoenaed under these rules, including § 904.245, will be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken are entitled to the same fees as are paid for like services in the courts of the United States. Fees and any other related expenses for NOAA emoloyees as authorized by the NOAA travel handbook will be paid by the party at whose instance the witness appears or the deposition is taken.

(d) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must provide for the services of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent to which interpreters are to be used. When available, the interpreter must be court certified under 28 U.S.C. 1827.

§ 904.253 Interlocutory appeals.

(a) At the request of a party or on the Judge's own initiative, the Judge may certify to the Administrator for review a ruling that does not finally dispose of the proceeding, if the Judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the Judge of the interlocutory ruling for review, the parties have 10 days to serve any briefs associated with the certification. The Administrator will promptly decide the matter.

(c) No interlocutory appeal lies as to any ruling not certified by the Judge.

§ 904.254 Ex parte communications.

(a) Except to the extent required for disposition of ex parte matters as authorized by law, after issuance of a NOVA, NOPS, or NIDP and until the final decision of the Agency is effective under these regulations, no ex parte communication relevant to the merits of the proceeding may be made, or knowingly caused to be made:

(1) By the Judge or by an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce or to any Agency employee involved in the investigation or prosecution of the case;

(2) By any Agency employee involved in the investigation or prosecution of the case to the Judge or to any Agency employee involved in the decisional process of the proceeding; or

(3) By an interested person outside the Department of Commerce to the Judge or to any Agency employee involved in the decisional process of the proceeding.

(b) An Agency employee or Judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the Judge or Administrator, as appropriate, may take action consistent with these rules, the applicable statute, and 5 U.S.C. 556(d) and 557(d).

(c) Agency counsel may not participate or advise in the decision of the Judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the Judge may not consult any person or party on a fact in issue unless notice and opportunity for all parties to participate is provided.

(d)(1) Paragraphs (a) and (b) of this section do not apply to communications concerning national defense or foreign policy matters. Such ex parte communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the United States Government involving intergovernmental negotiations, are allowed if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) Ex parte communications subject to this paragraph will be made a part of the record to the extent that they do not include information classified under an Executive Order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

Post-Hearing

§ 904.260 Official transcript.

(a) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided in the agreement with the reporter.

(b) The Judge may determine whether "ordinary copy," "daily copy," or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

§ 904.261 Post-hearing briefs.

(a) Unless a different schedule is established in the discretion of the Judge, including the procedure in paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond, unless the Judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the Judge may require that any proposed findings and conclusions and reasons in support be presented orally at the close of the hearing. In such case, the Judge will advise the parties in advance of hearing.

§ 904.262 Documents, copies and exhibits.

(a) If original documents have been received in evidence, a true copy thereof, or of such part as may be material or relevant, may be substituted in lieu of the original during the hearing or at its conclusion. The Judge may, in his or her discretion, and after notice to the other parties, allow the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the Judge in his or her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the Judge.

(c) Except upon the Judge's order, or upon request by a party, physical evidence will be retained after the hearing by the authorized enforcement officer responsible for the case.

Decision

§ 904.270 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and proceedings; exhibits admitted into evidence; briefs, pleadings, and other documents filed in the proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the proceeding. Any other exhibits and records of any ex parte communications will accompany the record of decision.

(b) The Judge will arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

(c) Exhibits offered after the close of a hearing will not be admitted, unless the Judge specifically keeps open or reopens the record to admit them.

§ 904.271 Decision.

(a) After expiration of the period provided in § 904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render a written decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and the ruling on any proposed findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision; and

(3) Such other matters as the Judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written decision under paragraph (a) of this section. The Judge may in such case direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the written decision on each of the parties by registered or certified mail, return receipt requested, and will promptly certify to the Administrator the record, including the original copy of the decision, as complete and accurate.

(d) Unless the Judge orders a stay under § 904.272, or unless a petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative, an initial decision becomes effective as the final administrative decision of NOAA 30 days after service, unless otherwise provided by statute or regulations.

§ 904.272 Petition for reconsideration.

Unless an order of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or decision. Neither the filing nor the granting of a petition for reconsideration may operate as a stay of an order or decision or its effectiveness date (including for purposes of § 904.273) unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the proceeding may file an answer in support or in opposition. In the Judge's discretion, the hearing may be reopened to consider matters raised in a petition that could not reasonably have been foreseen prior to issuance of the order or decision.

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the Judge within 30 days after the date the decision is served. The petition shall be addressed to the Administrator and filed at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW., Washington, DC 20230.

(b) Review by the Administrator of an initial decision is discretionary and is not a matter of right. A petition for review nust be served upon all parties. If a party files a timely petition for discretionary review, or action to review is taken by the Administrator upon his or her own initiative, the effectiveness of the initial decision is stayed until further order of the Administrator.

(c) Petitions for discretionary review may be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or precedent;

(3) A substantial and important question of law, policy, or discretion is involved (including the amount of the civil penalty); or

(4) A prejudicial procedural error has occurred.

(d) Each issue must be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the Judge may not be raised on review unless they were raised for the first time in the initial decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) No oral argument on petitions for discretionary review will be allowed.

(f) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies are allowed.

(g) If the Administrator declines to exercise discretionary review, such order will be served on all parties personally or by registered or certified mail, return receipt requested, and will specify the date upon which the Judge's decision will become effective as the final decision of NOAA. The Administrator need not give reasons for declining review.

(h) If the Administrator grants a petition for discretionary review, he or she will issue an order specifying issues to be briefed and a briefing schedule. Such issues may constitute one or more of the issues raised in the petition for discretionary review and/or matters the Administrator wishes to review on his or her own initiative. Only those issues specified in the order may be argued in the briefs and considered by the Administrator. No oral argument will be permitted.

(i) After expiration of the period for filing briefs under paragraph (h) of this section, the Administrator will render a written decision on the issues under review. The Administrator will transmit the decision to each of the parties by registered or certified mail, return receipt requested. The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision.

Subpart D—Permit Sanctions and Denials

General

§ 904.300 Scope and applicability.

(a) This Subpart sets forth policies and procedures governing the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of the statutes cited in § 904.1(c), except for the statutes listed in paragraph (b) of this section. These reasons include nonpayment of civil penalties or criminal fines, and violations of statutes, regulations, or permit conditions. Nothing in this subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this subpart, the provisions of Subparts A, B, and C apply to this subpart.

(b) Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR Part 970; under the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), at 15 CFR Part 981.

§ 904.301 Bases for sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided in this Subpart, NOAA may take action under this subpart with respect to any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit are as follows:

(1) The commission of any offense prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under Subparts B and C of this part; or

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA.

(b) A sanction may be imposed or a permit denied under this subpart with respect to the particular permit pertaining to the offense or nonpayment, and may also be applied to any NOAA permit held or sought by the permit holder, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in the same or a different fishery. NOAA may withhold that permit until the sanction against vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the fishery conservation zone with Captain X aboard. (See § 904.320(c).)

(c) Sanction not extinguished by sale. [Reserved]

§ 904.302 Notice of permit sanction (NOPS).

(a) A NOPS will be served personally or by registered or certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322).

(c) Upon demand by an authorized enforcement officer, a permit holder must surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

§ 904.303 Notice of intent to deny permit (NIDP).

(a) NOAA may issue an NIDP if the applicant has been charged with a violation of a statute, regulation, or permit administered by NOAA.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.302(a).

(c) NOAA will not refund any fee(s) submitted with a permit application if an NIDP is issued.

(d) An NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit under § 904.310(c) or § 904.320.

§ 904.304 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing. The hearing may be combined with any other hearing under this part.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

(c) If entitled to a hearing under this section, the recipient of a NOPS or NIDP will have 30 calendar days from receipt of the notice to request a hearing. A request for hearing must be dated and in writing. Failure to request a hearing within 30 days constitutes a waiver of the opportunity for a hearing.

(d) Even if no hearing is requested, NOAA may order a hearing if it will serve the interests of justice. This paragraph does not create any right to a hearing in addition to the right provided in paragraph (a) of this section.

Sanctions for Nonpayment of Penalties

§ 904.310 Nature of sanctions.

(a) NOAA may suspend a permit if

(1) A civil penalty has been assessed against the permit holder under Subparts B and C of this part, but the permit holder has failed to pay the penalty, or has defaulted on a payment agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) NOAA will suspend any permit issued to a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act under the circumstances set forth in paragraph (a) of this section.

(c) NOAA will withhold any other permit for which the permit holder applies if either condition in § 904.310(a) is applicable.

§ 904.311 Compliance.

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to NOAA for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.310 will be reinstated by affirmative order of NOAA; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

Sanctions for Violations

§ 904.320 Nature of sanctions.

Subject to the requirements of this subpart, NOAA may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

§ 904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by affirmative order of NOAA.

§ 904.322 Interim action.

(a) To protect marine resources during the pendency of an action under this subpart, in cases of willfulness, or as otherwise required in the interest of public health, welfare, or safety, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) of this section, only after finding that there exists probable cause to believe that the violation charged in the NOPS or NIDP was committed. The Judge's finding of

probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under § 904.304.

Subpart E—Written Warnings

§ 904.400 Purpose and scope.

This Subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in § 904.1(c).

§ 904.401 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

§ 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will (1) state that it is a "written warning"; (2) state the factual and statutory or regulatory basis for its issuance; (3) advise the violator of its effect in the event of a future violation; and (4) inform the violator of the right of review and appeal under § 904.403.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

(e) For written warnings under the Magnuson Fishery Conservation and Management Act or the Northern Pacific Halibut Act of 1982, the enforcement officer will note the warning, its date, and reason for its issuance on the permit, if any, of the vessel used in the violation. If noting the warning on the permit of the vessel is impracticable, notice of the written warning will be served personally, or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service will be deemed notation on the permit.

§ 904.403 Review and appeal of a written warning.

(a) If a person receives a written warning from an enforcement agent, the person may, within 90 days of receipt of the written warning, seek review by the appropriate NOAA Regional Attorney. The request must be in writing and must present the facts and circumstances that explain or deny the violation described in the warning. The Regional Attorney will review the information and notify the person of his or her decision.

(b) If a person receives a written warning from a Regional Attorney or staff attorney, or receives a decision from a Regional Attorney affirming a written warning, the person may appeal the warning or decision to the NOAA Assistant General Counsel for Enforcement and Litigation. The appeal must be brought within 30 days of receipt of the warning or decision from the Regional Attorney. The Assistant General Counsel for Enforcement and Litigation may, in his or her discretion, affirm, expunge, or modify the written warning and will notify the person of the decision. The decision constitutes the final agency action.

(c) The addresses of the NOAA Regional Attorneys are:

Regional Counsel, Office of General Counsel, NOAA, 14 Elm Street, Federal Building, Gloucester, MA 01930

Regional Counsel, Office of General Counsel, NOAA, 9450 Koger Blvd., Suite 102, St. Petersburg, FL 33702

Regional Counsel, Office of General Counsel, NOAA, Bin C15700, 7600 Sandpoint Way, NE., Seattle, WA 98115

Regional Counsel, Office of General Counsel, NOAA, 300 South Ferry Street, Room 2013, Terminal Island, CA 90731

Regional Counsel, Office of General Counsel, NOAA, P.O. Box 1668, Juneau, AK 99802

The address of the Assistant General Counsel for Enforcement and Litigation is 1825 Connecticut Avenue NW., Suite 607, Washington, DC 20235.

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release or forfeiture of seized property (except property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by NOAA.

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under the statutes listed in Subpart A. This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

§ 904.501 Notice of seizure.

Except where the owner, consignee, or other party that the facts of record indicate has an interest in the seized property is personally notified, or where seizure is made under a search warrant, NOAA will, as soon as practicable following the seizure or other receipt of seized property, mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. The notice will describe the seized property and state the time, place and reason for the seizure. The notice will inform each interested party of his or her right to apply for remission or mitigation of the forfeiture (including any agreement that may be required under § 904.506(b)(2)(vii)). The notice may be combined with a notice of the sale of perishable fish issued under § 904.505.

§ 904.502 Bonded release.

NOAA may, in its sole discretion, release any seized property upon deposit with NOAA of the full value of the property or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The deposit will be held in a NOAA suspense account, or deposited with the appropriate court, pending the outcome of forfeiture proceedings. In

addition, NOAA may, in its sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as NOAA deems appropriate. The provisions of § 904.506(f) apply to NOAA's determination whether to release the property. The deposit or bond will for all purposes be considered to represent the property seized and subject to forfeiture.

§ 904.503 Appraisement.

NOAA will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

§ 904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property that is determined under § 904.503 to have a value of $100,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.* (1) NOAA will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized. However, if the value of the seized property does not exceed $1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose whereabouts and interest in the property are known or easily ascertainable.

(2) The notice of proposed forfeiture will (i) describe the seized property, including any applicable registration or serial numbers; (ii) state the time, place and reason for the seizure; and (iii) describe the rights of an interested person to file a claim to the property (including the right to file a motion to stay administrative forfeiture proceedings and to petition to remit or mitigate the forfeiture).

(3)(i) Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with NOAA, at the address indicated in the notice, within 20 days of the date the notice was first published or posted. The claim must state the claimant's interest in the property.

(ii) Except as provided in paragraph (b)(3)(v) or (b)(4) of this section, a bond for costs in the penal sum of $5,000 or 10 per cent of the appraised value of the property, whichever is lower, but not less than $250, with sureties satisfactory to the Administrator, must be filed with the claim for seized property. The bond may be posted on Customs form 4615 or a similar form provided by NOAA. There must be endorsed on the bond a list or schedule in substantially the following form, signed by the claimant in the presence of witnesses, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond; to wit:

_____

_____

The foregoing list is correct.

_____

Claimant

Attest:

_____

_____

A certified check may be substituted for a bond.

(iii) Filing a claim and posting a bond does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iv) If the claim and bond are filed timely in accordance with this section, NOAA will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

(v) Upon satisfactory proof of financial inability to post the bond, NOAA may waive the bond requirement for any person claiming an interest in the seized property.

(4) Instead of, or in addition to, filing a claim and bond under paragraph (b)(3) of this section, any person claiming the seized property may file with NOAA within 20 days after the date of first publication or posting of the notice of proposed forfeiture, a motion to stay administrative forfeiture proceedings. The motion must contain: (i) the claimant's verified statement showing the claimant's absolute title to the seized property, free of all liens or other third party interests; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated for storage and maintenance of the property. NOAA, in its discretion, may grant the stay and impose any conditions deemed reasonable, including but not limited to length of the stay, factors that would automatically terminate the stay, and any requirement for a bond to secure payment of storage or maintenance costs. If NOAA denies or terminates the stay, the claimant, if he or she has not already done so, has 20 days from receipt of the denial or termination order to file a claim and bond in accordance with paragraph (b)(3) of this section. Failure to file the claim and bond within that 20 days will result in summary forfeiture under paragraph (b)(5) of this section.

(5) If a claim and bond are not filed within 20 days of notice in accordance with this section, or if a motion for a stay under paragraph (b)(4) is pending, NOAA will declare the property forfeited. The declaration of forfeiture will be in writing and will be served on each person whose whereabouts and prior interest in the seized property are known or easily ascertainable. The forfeited property will be subject to disposition as authorized by law and regulations of NOAA.

(6) If the appraised value of the property is more than $100,000, or a timely and satisfactory claim and bond for property appraised at $100,000 or less are submitted to NOAA, the matter will be referred to the Attorney General to institute *in rem* proceedings in the appropriate United States District Court.

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) NOAA will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the

owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the safe manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court. The proceeds will not be subject to release under § 904.502 or § 904.506(f).

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§ 904.506 Remission and mitigation of forfeiture.

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for relief from forfeitures incurred, or alleged to have been incurred, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for relief from forfeiture along with other consequences of a violation, the remission or mitigation of a forfeiture is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) NOAA will not consider a petition for remission or mitigation while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by NOAA will be forwarded to the Attorney General for consideration.

(b) *Petition for relief from forfeiture.* (1) Any person having an interest in property seized and subject to forfeiture may file a petition for relief from forfeiture. Unless otherwise directed in a notice concerning the seized property, the petition shall be addressed to NOAA and filed with the Regional Attorney nearest to the place where the property is held (addresses in § 904.403(c)). NOAA will consider a petition filed after a declaration or decree of forfeiture only if the petitioner demonstrates that he or she did not previously know of the seizure and was in such circumstances as prevented him or her from knowing of it, except that NOAA will not consider a petition filed more than three months from the date of such declaration or decree. (See § 904.507 regarding the right of certain claimants to petition for restoration of proceeds from the sale of forfeited property.)

(2) The petition need not be in any particular form, but must set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;

(v) Any request for release under paragraph (f) of this section pending final decision on the petition, together with any offer of payment to protect the United States' interest that petitioner makes in return for the release, and the facts and circumstances relied upon by petitioner in the request;

(vi) The signature of the petitioner, his or her attorney, or other authorized agent; and

(vii) An express agreement to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings).

A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* NOAA will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Decision on petition.* (1) After investigation under paragraph (c) of this section, NOAA will decide the matter and notify the petitioner. NOAA may remit or mitigate the forfeiture, on such terms and conditions as under the applicable statute and the circumstances are deemed reasonable and just, upon a finding:

(i) That the forfeiture was incurred without willful negligence and without any intention on the part of petitioner to violate the applicable statute; or

(ii) That other circumstances exist that justify remission or mitigation of the forfeiture.

(2) Unless NOAA determines no valid purpose would be served, NOAA will condition a decision to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to NOAA, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, NOAA may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. NOAA may also require that the property be promptly exported from the United States.

(e) *Compliance with the decision.* A decision by NOAA to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the decision. If the petitioner does not comply with the conditions within that period in the manner prescribed by the decision, or make arrangements satisfactory to NOAA for later compliance, the remission or mitigation will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Release of seized property pending decision.* (1) Upon request in the petition for relief from forfeiture, NOAA may in its discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The following, however, will not be released:

(i) Property in which NOAA is not satisfied that the petitioner has a substantial interest;

(ii) Property whose entry into the commerce of the United States is prohibited;

(iii) Live animals, except in the interest of the animals' welfare;

(iv) Proceeds from the sale of seized property sold under § 904.505 (see § 904.507 regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(v) Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(2) If NOAA grants the request, the amount paid by the petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the

property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a waiver by the petitioner of any claim arising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

§ 904.507 Petition for restoration of proceeds.

(a) The general provisions of § 904.506 on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition to any evidence required under § 904.506, the petition for restoration of proceeds must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

§ 904.508 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment must be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with NOAA at the address stated in the bill. NOAA will promptly review the written objections and within 30 days mail the final decision to the party who filed them. NOAA's decision will constitute final agency action on the matter.

§ 904.509 Abandonment.

(a) The owner of a seized item may abandon it to NOAA by various means, including, but not limited to, expressly waiving any claim to the item, refusing or otherwise avoiding delivery of mail concerning the seizure (as by giving a false name or address), or failing for more than 180 days to make or maintain a claim to the item.

(b) The owner of a seized item waives a claim to it by failing to respond within 120 days of issuance of a Government notice concerning the seizure, or by voluntarily relinquishing any interest in an item by written agreement, or otherwise.

(c) An item will be declared finally abandoned, without recourse, upon a finding of abandonment.

§ 904.510 Disposal of forfeited or abandoned items.

(a) *Delivery to Administrator.* Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, or the abandonment or waiver of any claim to any such property, it will be delivered to NOAA for storage or disposal according to the provisions of this section.

(b) *Purposes of disposal.* Disposal procedures may be used to alleviate overcrowding of evidence storage facilities, and to avoid the accumulation of seized items where disposal is not otherwise accomplished by court order, as well as to address the needs of governmental agencies and other institutions and organizations for such items for scientific, educational, and public display purposes. In no case will items be used for personal purposes, either by loan recipients or government personnel.

(c) *Disposal of evidence.* Items that are evidence may be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable items may be authorized for disposal sooner.

(d) *Loans*—(1) *To institutions.* Items approved for disposal may be loaned to institutions or organizations requesting such items for scientific, educational, or public display purposes. Items will be loaned only after execution of a loan agreement which provides, among other things, that the loaned items will be used only for noncommercial scientific, educational, or public display purposes, and that they will remain the property of the United States government, which may demand their return at any time. Parties requesting the loan of an item must demonstrate the ability to provide adequate care and security for the item. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) *To individuals.* Items generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the items will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

(3) *Selection of loan recipients.* Recipients of items will be chosen so as to assure a wide distribution of the items throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any item offered for disposal. The Administrator may solicit applications, by publication of a notice in the **Federal Register**, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific items for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

(4) *Loan agreement.* Items will be transferred under a loan agreement executed by the Administrator and the borrower. Any attempt on the part of the borrower to retransfer an item, even to another institution for related purposes, will violate and invalidate the loan

agreement, and entitle the United States to immediate repossession of the item, unless the prior approval of the Administrator has been obtained under § 904.510(d)(5). Violation of the loan agreement may also subject the violator to the penalties provided by the laws governing possession and transfer of the item.

(5) *Temporary reloans; documents to accompany items.* Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the item whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

(e) *Destruction of items.* This paragraph and other provisions relating to the destruction of property apply to items (1) which have not been handicrafted, or (2) which have been handicrafted and are of less than one hundred dollars ($100) value, and (3) for which no acceptable applications have been received, or for which publication in the **Federal Register** of the availability of similar items in the past has resulted in the receipt of no applications. Such items may be destroyed if they have been in government ownership for more than one year. Perishable items which are not fit for human consumption may be destroyed sooner, if the authorization required by § 904.510(c) has been obtained. Destruction of items will be witnessed by two persons, one of whom may be the disposing officer.

(f) *Food items.* Food items will, if possible, be disposed of by gift to nonprofit groups providing public welfare food services.

(g) *Record-keeping.* A "fish and wildlife disposal" form will be completed each time an item is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the item. These forms will be available to the public.

TITLE 50—WILDLIFE AND FISHERIES

PART 219—SEIZURE, FORFEITURE, AND DISPOSAL PROCEDURES—[REMOVED]

2. Part 219 of Title 50 is removed.

PART 621—CIVIL PROCEDURES

3. The authority citation for Part 621 continues to read as follows:

Authority: 16 U.S.C. 1801–1882.

§ 621.3 [Removed]

§ 621.4 [Redesignated as § 621.3]

4. Part 621 is amended by removing § 621.3, and by redesignating § 621.4 as § 621.3.

[FR Doc. 87–6859 Filed 3–30–87; 8:45 am]

BILLING CODE 3510-22-M

federal register

Tuesday
March 31, 1987

Part IV

Department of the Interior

Office of the Secretary

Department of Agriculture

Forest Service

Tennessee Valley Authority

Department of Defense

43 CFR Part 7
36 CFR Part 296
18 CFR Part 1312
32 CFR Part 229

Protection of Archaeological Resources; Uniform Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 7

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 296

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

DEPARTMENT OF DEFENSE

32 CFR Part 229

Protection of Archaeological Resources; Uniform Regulations

AGENCIES: Departments of the Interior, Agriculture, and Defense and Tennessee Valley Authority.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the standard for civil penalty amounts in the final uniform regulations to include determinations of archaeological value. The Archaeological Resources Protection Act of 1979 mandates that the archaeological or commercial value and the cost of restoration and repair of the archaeological resource involved be taken into account in assessing civil penalties for violations of the Act. The purpose of the amendments is to implement this provision of the Act in the final uniform regulations.

DATE: Written comments will be accepted until April 30, 1987.

ADDRESS: Comments may be mailed to Bennie C. Keel, Departmental Consulting Archeologist, P.O. Box 37127, Room 4318, 1100 L Street NW., Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Bennie C. Keel, National Park Service, Department of the Interior, Washington, DC, 202-343-4101; Lars Hanslin, Office of the Solicitor, Department of the Interior, Washington, DC., 202-343-7957; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, DC, 202-382-9425; Christina Ramsey, Office of the Assistant Secretary for Acquisition and Logistics, Department of Defense, Washington, DC., 202-695-7820; or Maxwell D. Ramsey, Office of Natural Resources, Tennessee Valley Authority, Norris, Tennessee, 615-632-1585.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would amend the regulations implementing the provisions for civil penalty amounts in the Archaeological Resource Protection Act of 1979 ("Act"; Pub. L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa-11). It was prepared by representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

The first purpose of the Act is to protect irreplaceable archaeological resources on public lands and Indian lands from unauthorized excavation, removal, damage, alteration, or defacement. As one of the enforcement provisions available to Federal land managers, the Act prescribes civil penalties for unauthorized use of archaeological resources. The civil penalties are to be based on standard determinations of archaeological or commercial value and the costs of restoration and repair (section 7(2)(A) of the Act).

The final uniform regulations (43 CFR Part 7, 36 CFR Part 296, 32 CFR Part 229, and 18 CFR Part 1312) omit consideration of archaeological value in section—.16 Civil penalty amounts, paragraphs (a)(1) and (2). The amendment in this proposed rule would revise those paragraphs to implement the provisions of the Act. Because consideration of this additional factor in assessing civil penalty amounts is mandated by the Act, no alternative approach is feasible.

The effect of the proposed rule would be to provide consistent, standard enforcement regulations by which Federal land managers can fully exercise their authority pursuant to the Act. It would affect persons who make unauthorized use of archaeological resources by providing clear guidance to Federal land managers in assessing civil penalties appropriate to the extent of violations.

Statement of Effects

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on findings that the rulemaking is directed toward Federal resource management, with no economic impact on the public.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Amendment Proposal

The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority are proposing identical amendments to the uniform regulations for protection of archaeological resources and are codifying these amendments in their respective titles of the Code of Federal Regulations. Since the regulations are identical, the text of the amendments is set out only once at the end of this document.

Department of the Interior (43 CFR Part 7)

List of Subjects in 43 CFR Part 7

Penalties.

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 43 CFR Part 7 continues to read as follows:

Authority: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (sec. 10(a)) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§ 7.16 [Amended]

2. Section 7.16 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Department of Agriculture, Forest Service (36 CFR Part 296)

List of Subjects in 36 CFR Part 296

Penalties.

PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 36 CFR Part 296 continues to read as follows:

Authority: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa-11) (sec. 10(a)) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat.

3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

§ 296.16 [Amended]

2. Section 296.16 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

George S. Dunlop,

Assistant Secretary for Natural Resources and Environment.

Department of Defense (32 CFR Part 229)

List of Subjects in 32 CFR Part 229

Penalties.

PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation of 32 CFR Part 229 continues to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11) (sec. 10(a)) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976); 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

§ 229.16 [Amended]

2. Section 229.16 in 32 CFR Part 229 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

Patricia Means,

OSD Federal Register Liaison Officer, Department of Defense.

Tennessee Valley Authority (18 CFR Part 1312)

List of Subjects in 18 CFR Part 1312

Penalties.

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 18 CFR Part 1312 continues to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11) (sec. 10(a)) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976); 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

§ 1312.16 [Amended]

2. Section 1312.16 in 18 CFR Part 1312 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

C.H. Dean, Jr.

Chairman, Tennessee Valley Authority.

§ —.16 Civil Penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § —.4 or of any term of condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resource damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition § —.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

* * * * *

[FR Doc. 87–6972 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70, 3410–11, 3810–01, 8120–01

Federal Register

Tuesday
March 31, 1987

Part V

Department of Education

Program for Severely Handicapped Children; Announcement of Final Funding Priorities and Invitation of Applications for Fiscal Year 1987; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Program for Severely Handicapped Children; Announcement of Final Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Program for Severely Handicapped Children.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final annual priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 330 C Street SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Program for Severely Handicapped Children, authorized by section 624 of the Education of the Handicapped Act (EHA), supports research, development or demonstration, training, and dissemination activities which meet the unique educational need of severely handicapped children and youth. In accordance with this authority, the Secretary will fund projects under the following priorities for fiscal year 1987. These priorities address the needs of deaf-blind and severely handicapped children which have been identified by professionals, paraprofessionals, and parents as being those most critical at this time. Projects will be funded for up to 36 months, except where otherwise indicated, subject to annual reveiw of progress, the availability of Federal funds, and other factors (see 34 CFR 75.251 through 75.253).

Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the **Federal Register** on September 2, 1986 (51 FR 31190). The public was given thirty days in which to comment. Comments were received from five individuals and one professional organization in response to the notice of proposed annual funding priorities. The comments and the Department's responses are summarized below:

Comment. One commenter expressed concern that projects funded under Priority (a), "Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment;" (b), "Statewide systems change;" and (c), "Inservice training—services for severely handicapped children and youth," assumed that it is generally preferred and always least restrictive for a deaf-blind child to be served in a totally integrated, mainstreamed environment within the local public school.

Response. No change has been made. The EHA requires that the determination of the appropriate placement for each handicapped child must be made on an individual basis. These priorities are intended to expand the options for integration of severely handicapped children and youth into a variety of environments. In the past, less restrictive options have often not been widely available.

Comment. One commenter questioned whether all projects funded under Priority (a), "Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment," must make provision to include deaf-blind children and youth.

Response. No change has been made. This priority has been designed to ensure that all projects make provisions to include deaf-blind children and youth. The purpose of the priority is to provide a greater number and variety of placement options for deaf-blind children and youth along with other severely handicapped children. Deaf-blind children and youth have frequently been excluded from integration projects such as these because of the additional challenge presented to a grantee to demonstrate a capacity to serve them effectively in such a placement.

Comment. One commenter suggested that "the severely communicatively handicapped" be added to the list of handicapped childen and youth served by personnel eligible to benefit under Priority (c), "Inservice training—services for severely handicapped children and youth."

Response. No change has been made. The types of severely handicapped children described in the regulations at 34 CFR 315.4(c) are used only as examples of the types of children with severe handicaps who are eligible to participate in this project. Severely communicatively handicapped children who meet the program's definition of "severely handicapped children and youth" are consequently eligible for project participation.

Comment. Two commentes addressed Priority (e), "Model projects for the most severely handicapped children and youth." One commenter suggested a modification in the statement. "Projects must reflect ongoing planning between relevant health and educational agencies." The commenter was concerned that this statement did not address situations where a single agency provides health-related as well as educational services. Another commenter expressed concern that this priority requires validated education procedures to be included in these model projects, and pointed out that most of these procedures have not been demonstrated to be effective with students who have the most severe and multiple handicapping conditions.

Response. Changes have been made. The priority has been modified to stress coordination of health and educational services planning, and for the adoption or adaptation of educational procedures found to be effective with other severely handicapped children and youth.

Comment. One commenter expressed concern that projects funded under Priority (g), "Transition skills development for deaf-blind or other severely multi-sensory impaired youth," may not adequately promote communication skills training for severely handicapped youth in transition.

Response. A change has been made. This priority has been modified to include the provision of communication skills training in each transition project.

Comment. One commenter expressed the concern that projects funded under Priority (f), "Communication skills development for deaf-blind children and youth" and Priority (h), "Supported employment for deaf-blind youth," restricted participation in these projects to the deaf-blind, and suggested that the need of other severely handicapped childen and youth for such training also be addressed.

Response. No change has been made. The reason participation is limited to deaf-blind children is because funds for these two priorities come exclusively from the Services for Deaf-Blind Children and Youth program, (CFDA 84.025).

Comment. Two commenters pointed out that projects funded under Priority (d), "Nondirected demonstration projects for severely handicapped (other than deaf-blind) children and youth," and Priority (i), "Non-directed demonstration projects for deaf-blind children and youth", were limited to

demonstration activities to the exclusion of research activities. Each commenter urged the expansion of these priority statements to provide opportunities for research projects which would provide innovative and effective approaches to the education of these children and youth.

Response. Changes have been made. Both Priority (d) and Priority (i) have been modified to encourage the submission of research projects which would produce or apply new knowledge. The critical need for research in this field pointed out by the two commenters in this area, has been strongly endorsed in recent months at national meetings of professional providers of services to children with severe handicaps.

Other Changes

Changes have been made in Priority (b), "State-wide systems change," to: (1) Assist applicants in preparing applications by describing information that is needed in order for their applications to be properly evaluated, and (2) increase the length of time and funding level for the projects in order to allow applicants to propose an effective State-wide change system. The changes to this priority have been made because of concerns that some State-wide systems grants awarded in the past have not resulted in effective State-wide systems change. Because the priority has been revised to provide better direction and guidance and to ensure more effective development and implementation, the pool of applicants has been expanded to include all States that have a demonstrated need, including States that have received a similar grant in the past.

Priorities

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75–105(c)(3), the Secretary will give an absolute preference to applications submitted under the Program for Severely Handicapped Children in fiscal year 1987 that respond to one of the priorities described below.

(a) *Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment.*

This priority supports projects which, on a districtwide basis (local educational agency) or cross-district basis, design, implement, and evaluate innovative approaches to meet the needs of severely handicapped (including deaf-blind) children and youth in the least restrictive and least segregated environments. Projects supported under this priority must provide for and demonstrate the capacity to serve effective by deaf-blind children and youth. Projects under this priority must:

(1) Develop new approaches for delivery of integrated educational services, which includes providing severely handicapped children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(2) Demonstrate through the provision of project services the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(3) Demonstrate the delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community reference skills, and employment skills;

(4) Promote acceptance of severely handicapped children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(5) Demonstrate effective involvement of families in the planning and delivery of services to their severely handicapped children or youth.

It is expected that awards will be made at approximately $100,000 per year for up to three years under this competition.

(b) State-Wide Systems Change

(1) Projects proposed under this priority must:

(i) Develop, in conjunction with the EHA Part B State plan, activities to improve the quality of special education and related services in the State of severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated environments to integrated environments;

(ii) Significantly increase the number of severely handicapped children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers;

(iii) Implement the planned services;

(iv) Evaluate the effectiveness of the implementation, including collecting and reporting each year on the number of severely handicapped children in the State in each type of educational setting and showing changes from previous years; and

(v) Disseminate information about project outcomes.

(2) Planning for improved services under this priority must:

(i) Identify resources available in the State to provide the needed services to the severely handicapped children and youth;

(ii) Establish procedures to improve the EHA Part B State plan child-find activities pertaining to all severely handicapped children and youth in the State;

(iii) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated, least restrictive environments. These services must at a minimum contain the components specified in paragraphs (1) through (5) of Priority (a)—Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment;

(iv) Establish a project advisory board having representation of parents of project children and youth, providers of services to this population, and State and professional organizations, which is responsible for providing significant input on project management procedures; and

(v) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, including the elimination of overlapping and redundant services.

It is expected that awards will be made at approximately $250,000 a year for up to five years under this competition.

(c) Inservice Training—Services for Severely Handicapped Children and Youth.

This priority supports projects which utilize effective inservice training activities which meet the needs of qualified personnel to provide services to severely handicapped children and youth such as those who are deaf-blind, profoundly handicapped, traumatically head injured, medically dependent, multi-sensory impaired, motorically impaired, and severely behaviorally disordered. Personnel receiving inservice training under this priority must be either:

(1) Currently providing educational service to these severely handicapped children and youth; or

(2) Committed by signed contract or other such agreement to provide educational services to these severely handicapped children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must be based on innovative practices for the education of these children and youth in least restrictive school and community environments. These practices could include, for example, training sequences for development of job-related skills determined to be critical for retention of students in supported work placements; use of augmentative communication devices for deaf-blind children placed in least restrictive environments parental involvement in monitoring the progress of their severely handicapped children; and application of research project findings with severely handicapped children in normalized, least restrictive environments.

Training may be made available for professionals and paraprofessionals in educational, vocational, health, social services and other related service fields. All inservice training projects must be planned in consideration of the comprehensive system of personnel development required under Part B of the EHA (*See* 34 CFR 300.139) and demonstrate ongoing coordination and cooperation between universities and State agencies. Projects could provide for release time of participants, options for academic credit, salary step credit, certification renewal, or updating professional skills. Funds made available under this priority may not be used for payment of stipends or allowances for travel and other expenses for trainees or their dependents.

It is expected that awards will be made at approximately $69,000 per year for up to three years under this competition.

(d) Nondirected Demonstration and Research Projects for Severely Handicapped (Other Than Deaf-Blind) Children and Youth

This priority supports nondirected demonstration projects and nondirected research projects.

(1) Nondirected demonstration projects are to be designed to demonstrate specific, viable procedures for meeting significant educational needs including vocational needs of severely handicapped (other than deaf-blind) children and youth. These projects must focus on direct services to these children and youth, applying research findings, or otherwise exemplifying innovative, effective approaches to their education.

Applicants proposing to conduct a project under paragraph (d)(1) of this section must fully describe and justify the particular approach to be demonstrated, citing, where relevant, any pertinent research upon which the demonstration's approach is based.

(2) Nondirected research projects are to be designed to conduct research to identify and meet specific educational needs of severely handicapped (other than deaf-blind) children and youth. These projects must be designed to generate new knowledge that has the potential for contributing significantly to the field.

It is expected that awards under paragraph (d) (1) and (2) of this section will be made at approximately $111,000 per year for up to three years under these competitions.

(e) Model Projects for the Most Severely Handicapped Children and Youth

This priority supports projects which design, implement, and evaluate innovative approaches for educating the most severely handicapped children and youth, among whom are those who are traumatically head injured, medically dependent, multi-sensory impaired, motorically impaired, or severely behaviorally disordered. Projects must reflect on-going coordinated planning among providers of relevant health and educational services. Project activities must emphasize the active integration of the participating children and youth with nonhandicapped peers in least restrictive environments. Services provided in these projects must evidence awareness and, where appropriate, adoption or adaptation of educational procedures found to be effective with other severely handicapped children and youth.

It is expected that awards will be made at approximately $125,000 per year for up to three years under this competition.

(f) Communication Skills Development for Deaf-Blind Children and Youth

This priority supports projects which identify critical educational problems in developing communication skills in deaf-blind children and youth, design and demonstrate innovative programs to effectively resolve those problems, and disseminate information about project findings and recommendations. Projects must address one of the following issues:

(1) Appropriate communication modes;

(2) Standardized procedures for communication (language) sampling within a range of social contexts;

(3) The sequence of communicative behaviors that follow the presymbolic stage and are predictive of later linguistic or communicative functioning;

(4) Procedures for assessment of communicative exchanges between deaf-blind persons and others (parents, siblings, peers, teachers, etc.);

(5) Effective intervention strategies that facilitate effective communicative exchanges between deaf-blind persons and others; or

(6) Procedures for selecting and evaluating technological aids with attention to the vocabulary and linguistic features appropriate to each device and its individual user.

It is expected that awards will be made at approximately $95,000 per year for up to three years under this competition.

(g) Transition Skills Development for Deaf-Blind or Other Severely Multisensory Impaired Youth

This priority supports projects which design, implement, and disseminate information about innovative practices which facilitate the transition of deaf-blind or other severely multisensory impaired youth from education to employment and other service options, in preparation for their integration into regular community environments as adults. Emphasis in these projects must be placed on the development of job related skills, peer interactions, orientation and mobility, personal grooming, independent living skills, communication skills, and the development of a positive self concept. Projects must include specific activities directed toward development of skills identified as those most needed by project participants in order to facilitate their effective transition. Each project must include procedures for initiating and maintaining an on-going coordination and cooperation with State educational and rehabilitative agencies in the State where the project is located.

It is expected that awards will be made at approximately $73,600 per year for up to three years under this competition.

(h) Supported Employment for Deaf-Blind Youth

This priority supports projects which design, implement, and disseminate information about innovative practices in the job placement, job site training and follow-up of deaf-blind youth. The practices must extend beyond, expand upon, complement, or supplement existing successful practices. These projects are to focus on on-the-job skills and adaptations, employee-employer relations, job acquisition, retention skills, and where appropriate, supplemental support for the employment of deaf-blind youth on a long-term basis. These projects may also include feasible applications of techniques still in the development stage

in research and other experimental programs.

These projects are to include the provision of services for severely handicapped deaf-blind youth who typically have not been eligible for vocational rehabilitation services.

The overall objective of these projects should be to provide an employment focus directed toward the achievement by these deaf-blind youth of the same goals (security, mobility, quality of life, and appropriate income level) sought for nonhandicapped workers.

The following provisions which distinguish these projects from traditional vocational education programming for deaf-blind youth must be incorporated into these projects:

(1) Paid employment in regular job settings such as assisted competitive employment, mobile work crews, and work stations in industry;

(2) Opportunities for integration of these deaf-blind youth with nonhandicapped coworkers in their job setting and with relevant others in typical living environments external to the job;

(3) Financial and social services support for these deaf-blind youth throughout the course of the project; and

(4) A plan cooperatively developed with related State and local agencies for the continuation of those services for an appropriate period of time following termination of the project.

It is expected that awards will be made at approximately $100,000 per year for up to three years under this competition.

(i) Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth.

This priority supports nondirected demonstration projects and nondirected research projects for deal-blind children and youth:

(1) Nondirected demonstration projects are to be designed to demonstrate specific, variable procedures for meeting significant educational needs including vocational needs for deaf-blind children and youth. These projects must focus on direct services to these children and youth applying research findings, or otherwise exemplifying innovative effective approaches to their education. Applicants proposing to conduct a project under paragraph (i)(1) of this section must fully describe and justify the particular approach to be demonstrated, citing where relevant any pertinent research upon which the project is based.

(2) Nondirected research projects are to be designed to conduct research to identify and meet specific educational needs of deaf-blind children and youth. These projects must be designed to generate new knowledge that has the potential for contributing significantly to the field.

It is expected that awards under paragraphs (i)(1) and (i)(2) of this section wil be made at approximately $112,000 per year for up to three years under this competition.

Program Authority

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance Number 84.086; Program for Severely Handicapped Children)

Dated: March 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-7057 Filed 3-30-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA 84.086]

Notice Inviting Applications for New Awards Under the Program for Severely Handicapped Children for Fiscal Year 1987

Purpose

This program provides grants and cooperative agreements to public or private, profit or nonprofit, organizations or institutions to support projects demonstrating innovative approaches for meeting the unique educational needs of children with severe handicaps.

Deadline for Transmittal of Applications

June 12, 1987.

Applications Available

April 15, 1987.

CFDA No.	Priority title	Available funds	Estimate average award	Estimate number of awards	Anticipated project period
84.086C	Nondirected demonstration and research projects for severely handicapped (other than deaf-blind) children and youth.	445,000	111,000	4	36 months.
84.086E	Supported employment for deaf-blind youth	300,000	100,000	3	36 months.
84.086H	Nondirected demonstration and research projects for deaf-blind children and youth	560,000	112,000	5	36 months.
84.086J	State-wide Systems Change	1,300,000	250,000	5	60 months.
84.086K	Communication skills development for deaf-blind children and youth	380,000	95,000	4	36 months.
84.086M	Transition skills development for deaf-blind or other severely multisensory impaired youth	736,000	73,000	10	36 months.
84.086N	Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment.	500,000	100,000	5	36 months.
84.086R	Inservice training—services for severely handicapped children and youth	900,000	69,000	13	36 months.
84.086W	Model projects for the most severely handicapped children and youth	250,000	125,000	2	36 months.

Applicable Regulations

(a) The Program for Severely Handicapped Children Regulations, 34 CFR 315,

(b) The Education Department General Administrative Regulations, 34 CFR 74, 75, 77 and 78,

(c) The Final Annual Funding Priorities, Program for Severely Handicapped Children, as published in this issue of the **Federal Register.**

For Applications or Information Contact

R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4615 Switzer Building), Washington, DC 20202. Telephone (202) 732-1177.

Program Authority

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.086; Program for Severely Handicapped Children)

Dated: March 26, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87-7058 Filed 3-30-87; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Tuesday
March 31, 1987

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700 and 736

Permanent Regulatory Program; Federal Program for Georgia et al.; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700 and 736

Permanent Regulatory Program; Federal Program for Georgia et al.; Public Notice, Comment and Hearing Procedures

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its rules governing the promulgation and revision of a Federal program for a State for coal exploration and surface coal mining operations on non-Federal and non-Indian lands. The proposed rule would revise the existing public notice, comment and hearing procedures. In addition, the rule would add to the general provisions in Part 700 a definition of the terms *OSM* and *OSMRE*.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern Time on June 1, 1987.

Public Hearing: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC, at 9:30 a.m. local time on May 26, 1987. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern Time on April 30, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "For Further Information Contact" beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC.

Request for public hearings: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above may not be considered or included in the administrative record for the final rule.

Public Hearing

OSMRE will hold a public hearing on the proposed rule on request only. The time, date and address scheduled for the hearing is specified previously in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating at the hearing should inform Mr. DeVito (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 5:00 p.m. Eastern Time on April 30, 1987. If no one has contacted Mr. DeVito to express an interest in participating in the hearing by that date, the hearing will not be held. It only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If the hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, establishes a nationwide program for the regulation of surface coal mining and reclamation operations. To provide a consistent regulatory framework for this nationwide program, section 501(b) of the Act, 30 U.S.C. 1251(b), requires the Secretary of the Interior (the Secretary) to promulgate a permanent regulatory program (the permanent program). This permanent program, which currently is in force, includes performance standards for surface coal mining and reclamation operations, and procedures for establishing State and Federal programs.

Section 503 of the Act, 30 U.S.C. 1253, allows a State to establish an individual State program. A State program, with certain exceptions, gives a State exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within its borders. Where a State does not establish a State program, section 504 of the Act, 30 U.S.C. 1254, requires the Secretary to establish a Federal program for that State.

Regulations that provide a general introduction to the permanent program appear at 30 CFR Part 701. The permanent program regulations that govern State and Federal programs are grouped in 30 CFR Chapter VII Subchapter C. Standards and procedures that govern Federal programs and their promulgation appear in Subchapter C at 30 CFR Part 736.

Under Part 736 of the permanent program OSMRE has promulgated Federal programs for ten States: Georgia (August 19, 1982; 47 FR 36393); Idaho (April 14, 1983; 48 FR 16218); Massachusetts (September 12, 1983; 48 FR 41000); Michigan (October 22, 1982; 47 FR 47162); North Carolina (June 30, 1983; 48 FR 30298); Oregon (November 2, 1982; 47 FR 49818); Rhode Island (September 12, 1983; 48 FR 40990); South Dakota (April 19, 1983; 48 FR 16818); Tennessee (October 1, 1984; 49 FR 38874); and Washington (February 24, 1983; 48 FR 7870). As provided by 30 CFR 900.13, the rules for each of these Federal programs are codified in 30 CFR Chapter VII Subchapter T under separate parts for each State.

To take full advantage of the existing permanent program performance standards, while avoiding unnecessary repetition, most of the rules that make up each Federal program do not themselves set out detailed requirements, but instead cross-reference a corresponding part in the permanent program. In situations where a cross-reference to the permanent program does not meet the needs of a particular State, the Federal program rule for that State also includes an additional paragraph or paragraphs with appropriate detailed requirements.

For example, the Federal program for the State of Georgia is codified at 30 CFR Part 910. Section 910.842, which governs Federal inspections, in paragraph (a) cross-references the corresponding Part 842 of the permanent program. In addition, paragraph (b) requires OSMRE to furnish to the Georgia Department of Natural Resources upon request a copy of any inspection report or enforcement action taken.

One consequence of this cross-referencing from the Federal programs to the permanent program is that whenever a permanent program rule is revised directly, each Federal program rule which cross-references that permanent program rule also is revised indirectly in a similar way. Thus, in addition to the public notice, comment and hearing procedures that apply to the permanent program, when revising a cross-referenced permanent program rule OSMRE also must comply with the public notice, comment and hearing procedures that apply to each affected Federal program.

For the promulgation or revision of the permanent program regulations there are no OSMRE rules governing public notice, comment and hearing procedures. OSMRE follows the requirements of section 501 of the Act, 30 U.S.C. 1251, and section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. Generally, section 501 requires OSMRE to provide a 30-day public comment period, and at least one public hearing on a proposed rule. In appropriate cases a longer comment period is provided by OSMRE, and additional public hearings at different locations are scheduled in advance or held on request.

For the promulgation or revision of a Federal program, the public notice, comment and hearing procedures are governed by section 504(c) of the Act, and the existing OSMRE permanent program rules at 30 CFR 736.12 and 736.13. Section 504(c) requires simply that "[p]rior to the promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State."

The OSMRE rules at §§ 736.12 and 736.13, which implement section 504(c), are far more detailed. They include requirements for a public hearing in the affected State; notice in the **Federal Register** at least 60 days before the hearing; placing a copy of the administrative record in an appropriate OSMRE office and a public office in the capital city of the affected State; specified hearing procedures; and notice at least once a week for 3 weeks within the 30 days before the hearing in at least one newspaper of general circulation in the coal mining area of the affected State.

Because most of the permanent program rules are cross-referenced by the ten Federal programs, OSMRE must follow these detailed procedures for most revisions of the permanent program. Since there are ten Federal programs, the existing procedures require OSMRE to distribute copies of the administrative record for the revision to ten different States, and to publish at least 30 accurately-timed newspaper notices. Since the permanent program rules continually are undergoing revision, this process, if continued, would consume considerable time, money and manpower.

OSMRE believes that procedures far simpler than those of existing §§ 736.12 and 736.13 would give the public adequate opportunity to participate fully in the rulemaking process. OSMRE has reevaluated the procedures in §§ 736.12 and 736.13 and tentatively has concluded that most of them are too elaborate, that they do not produce benefits to the public commensurate with the costs of compliance, and that simpler procedures would not lessen the ability of either OSMRE or the public to meet the requirements and achieve the goals of the Act. Accordingly, OSMRE proposes to revise §§ 736.12 and 736.13 as described in the following discussion of the proposed rule.

In addition to the revision of Part 736, OSMRE proposes to add a new definition to 30 CFR 700.5. Although the term *OSM* is used throughout existing 30 CFR Chapter VII, it is defined only in § 870.5, which applies only to Parts 870 through 888. Therefore, OSMRE proposes to revise 30 CFR 700.5 by adding a definition of *OSM* that would apply throughout Chapter VII. OSMRE also proposes to revise § 700.5 by adding a definition of *OSMRE*, the preferred acronym for the Agency.

III. Discussion of Proposed Rule

Definitions—Section 700.5. The proposed rule would revise existing 30 CFR 700.5 by adding a definition of the term *OSM* and *OSMRE* to mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act. The definition would apply throughout 30 CFR Chapter VII. The existing regulations in Chapter VII would continue to use the term *OSM* until they are otherwise revised.

Federal Program Notice, Comment and Hearing Procedures—Section 736.12. This proposed rule would amend the public notice, comment and hearing procedures OSMRE must follow when promulgating or revising a Federal regulatory program for a State. It would simplify the existing procedures, while continuing to give the public adequate opportunity to participate effectively in the rulemaking process.

Proposed § 736.12 incorporates, with varying degrees of revision, the majority of the procedures currently found in existing §§ 736.12 and 736.13. The revisions and the procedures in existing §§ 736.12 and 736.13 that are omitted from proposed § 736.12, are discussed subsequently in their relevant contexts.

Section 736.12(a) Federal Register Notice. Prior to the promulgation or revision of a Federal program for a State, proposed § 736.12(a) would require OSMRE to publish in the **Federal Register** a notice which at a minimum would include five specified items of information.

Proposed paragraph (a)(1) would require that the notice include the basis, purpose and substance of the proposed Federal program or revision. It would correspond with the existing § 736.12 (a)(1) and (a)(2), which require that the **Federal Register** notice include "the bases and purposes of" and "the proposed text of" the Federal program or revision. The term "substance" would be substituted for "proposed text" in accordance with section 553(b)(3) of the APA, which requires that a **Federal Register** notice of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." In the context of the promulgation or revision of a Federal program, the term "substance" is the more apt of these APA alternatives.

Propose paragraph (a)(2) would require that the notice offer the public an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice. This would correspond with portions of existing § 736.12(a)(7). However, the mandatory comment period would be reduced from the present 60 days to the 30 days specified in the APA. This change would afford OSMRE flexibility in instances where the nature of the rulemaking did not justify an extended comment period. When the complexity of a proposed rule or its impact justified an extended comment period, OSMRE could still provide a 60-day comment period as it presently does.

The term data in existing § 736.12(a)(7) was deleted from the proposed rule because it is included implicitly in the more general term *comments*. A commenter may submit to

OSMRE any written information which he or she believes is relevant to the promulgation or revision of a Federal program, including data.

Proposed paragraph (a)(3) would require that in the notice OSMRE offer to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period, only upon request. This would correspond with portions of existing §§ 736.12(a)(5) and 736.13(c). While section 504(c) of the Act requires OSMRE to hold a public hearing when promulgating a Federal program, this obviously does not include a hearing which no member of the public plans to attend. Existing § 736.13(c) requires OSMRE to hold a public hearing for the promulgation of a Federal program, but only upon request for a revision. The proposed rule would require the public to request a hearing under either circumstance. In addition, there would no longer be any requirement to publish the **Federal Register** notice at least 60 days before the date of the hearing, as the existing rules now require. OSMRE believes that the mandatory 60-day period is unnecessarily long and that it prolongs the rulemaking process without any corresponding public benefit.

Proposed paragraph (a)(4) would require that the notice specify the address of an appropriate place where any person may inspect and copy during normal business hours, a copy of the administrative record for the proposed Federal program or revision. This corresponds with portions of existing §§ 736.12(a)(4) and 736.13(f).

While the existing rules require OSMRE to make available "the text of the proposed program or revision and any supporting information" and "[c]opies of all written comments received and the transcripts of the public hearings," this proposed rule would specify only "a copy of the administrative record." This would not limit the information available to the public, but merely would substitute a more general term that includes all of the information now specified by the existing rules.

For the promulgation of a Federal program, the existing rules require OSMRE to make certain information available at both an OSMRE office and a public office in the capital city of the affected State. Paragraph (a)(4) would substitute for these two offices the term "an appropriate place." This might be either an OSMRE office, a State or other public office, a library, or other appropriate facility. This paragraph also differs from the existing requirement in that the location would not have to be in the affected State. This would relieve OSMRE from having to lodge copies of the administrative record for a Federal program revision, which essentially is the administrative record for the underlying permanent program revision, in all Federal program States, which currently are 10 in number. OSMRE believes that for the promulgation or revision of a Federal program the administrative record located in OSMRE headquarters in Washington, DC, generally is adequate to meet the needs of the public. In cases where there appeared to be sufficient demand for a copy of the administrative record in a particular State, OSMRE would consider making one available at an appropriate place in the State. By not specifying any particular office the proposed rule gives OSMRE maximum flexibility to lodge a copy of the administrative record at the place where there is the greatest interest in the Federal program or revision.

Proposed paragraph (a)(5) would require for the indirect revision of a Federal program that the **Federal Register** notice state that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program.

Section 736.12(b) Newspaper notice. Prior to the initial promulgation of a Federal program for a State, proposed § 736.12(b) would require OSMRE to publish in a newspaper of general circulation in the coal mining area of the affected State a notice like the **Federal Register** notice required by proposed paragraph (a)(1) of this section.

This proposed section corresponds with existing § 736.12(b). For the substance of the proposed Federal program the proposed rule would authorize OSMRE to substitute a brief description in order to avoid the cost of publishing a lengthy newspaper notice. Any person interested in the full text of the proposed Federal program could consult the **Federal Register** notice.

Unlike the existing procedures which require newspaper notice at least once a week for 3 weeks, proposed § 736.12(b) would require only a single notice. OSMRE believes that the multiple notice required by the existing rule is unnecessary and that a single notice is adequate to inform the public about, and provide an opportunity to comment on, a proposed Federal program.

While the existing procedures require OSMRE to publish the newspaper notice at least 30 days before the hearing, this proposed rule would require only that OSMRE publish a newspaper notice. The time element would be removed in order to accommodate the reduced public comment period being proposed. OSMRE would publish the newspaper and **Federal Register** notices as concurrently as practicable.

A major difference in proposed § 736.12(b) as compared to existing § 736.12(b) is the lack of a requirement for newspaper notice of a proposed revision of a Federal program. OSMRE proposes to delete the requirement for newspaper notice for a revision of a Federal program because it tentatively has concluded that for a revision a **Federal Register** notice is sufficient. There are two reasons for this conclusion: First, after a Federal program is promulgated for a State any person in that State who is interested in the regulation of surface coal mining is aware of the Federal presence and reasonably can be expected to rely on the **Federal Register** for notice of a revision. And second, for a revision of the Federal program which is in effect a revision of the permanent program, the nationwide scope of the underlying permanent program revision would insure widespread public involvement. Under these circumstances it is unlikely that a newspaper notice would reach any interested persons who were not already aware of the proposed revision.

In addition, OSMRE routinely issues a press release for any rule that is likely to generate public interest. The result is that those persons most interested in, and most likely to comment on a proposed rule revising a Federal program are aware of the proposal. Even though there presently are ten states with full Federal programs, only Tennessee and Washington have active coal mining. Consequently, outside of these two states there has been little interest in the revision of a Federal program, and in only one state has a hearing on the promulgation or revision of a Federal program ever been requested.

Section 736.12(c) Federal agency comment. Prior to the promulgation or revision of a Federal program for a State, proposed § 736.12(c) would require OSMRE, as appropriate, to solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision. This corresponds with existing § 736.13(a).

The existing procedures require OSMRE to solicit comments from the heads of these agencies in all cases, while this proposed rule would require OSMRE to do so only "as appropriate". Under this proposed rule OSMRE would solicit comments from only those

agencies which reasonably might be expected to have comments, and only on those issues of apparent interest to them. OSMRE has proposed this change to eliminate unproductive correspondence with agencies that are neither concerned with nor have any expertise revelant to a proposed Federal program or revision.

There is no proposed procedure corresponding to existing § 736.12(a)(3), which requires that the **Federal Register** notice include the proposed effective date of the Federal program or revision. OSMRE believes that because of the numerous variables in the rulemaking process, it seldom is possible to predict the effective date of a rule with sufficient accuracy to benefit the public at the proposal stage. To avoid the uncertainties resulting from proposing an inaccurate effective date, OSMRE has omitted this requirement from the proposed rule.

Section 736.13 Public comment (Removed). The proposed rule would remove existing § 736.13. A number of the procedures currently in that section would be relocated in proposed § 736.12, either with or without additional revision. Other procedures would be eliminated entirely. An explanation of what would happen in each paragraph of this section follows.

Section 736.13(a). Existing § 736.13(a) requires OSMRE, when proposing to promulgate or revise a Federal program, to solicit comments from the heads of various Federal agencies. A similarly-worded, revised version of this paragraph would appear in proposed § 736.12(c). The revised version would require OSMRE to solicit Federal-agency comments only "as appropriate." For more information on these changes, see the preceding discussions of proposed § 736.12(c).

Section 736.13(b). Existing § 736.13(b) requires OSMRE to give the public an opportunity to submit written data and comments on a proposed Federal program or revision within 60 days after publication of a notice in the **Federal Register.** A similarly worded, revised version of this paragraph would appear in proposed § 736.12(a)(2). The principal difference in the proposed rule are that the comment period would be reduced from 60 to 30 days, and the term *data* would be deleted as superflous. For more information on the these changes, see the preceding discussions of proposed § 736.12(a)(2).

Section 736.13(c). Existing § 736.13(c) requires OSMRE to hold a public hearing prior to promulgating a Federal program for a State, and upon request prior to revising a Federal program. For promulgation and revision, these procedures are relocated in proposed § 736.12(a)(3). Unlike existing paragraph (c) the proposed section requires OSMRE to hold a hearing for both promulgation or revision only upon request. For more information on these changes, see the preceding discussion of proposed § 736.12(a)(3).

Section 736.13(d). Existing § 736.13(d) authorizes OSMRE to hold additional hearings or to solicit additional public comment when appropriate. There is no corresponding procedure in the proposed rule. This paragraph was removed as superflous because notwithstanding the existing rule OSMRE has sufficient authority to do either of these things. Even though the paragraph is being removed to simplify the rule, OSMRE would continue to hold additional hearings or to solicit additional public comment when the public interest in a particular rule warrants.

Section 736.13(e). Existing § 736.13(e) requires OSMRE to transmit to the Director all public comments, hearing transcripts and related materials. This requirement is implicit in existing § 736.14(a), which requires the Director to consider such information in deciding whether to promulgate or revise a Federal program. Therefore, OSMRE proposes to remove this paragraph as superfluous.

Section 736.13(f). Existing § 736.13(f) requires OSMRE to make available for public inspection and copying at the appropriate OSMRE office, and at a public office in the capital city of the affected State, copies of all written comments and hearing transcripts. A revised version of these procedures is relocated in proposed § 736.12(a)(4), which unlike existing paragraph (f) would require OSMRE to make "a copy of the administrative record" available only at "an approporiate place." For more information on these changes, see the preceding discussion of proposed § 736.12(a)(4).

Section 736.14 Director's decision. This proposed rule also would make a technical change in § 736.14, which governs the Director's decision on a proposed Federal program or revision. The reference to § 736.13 would be changed to § 736.12 to conform with the changes the proposed rule would make in the referenced sections. This would not have any substantive effect on § 736.14, itself, which except for this technical change would remain the same.

IV. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule includes no information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The procedures the rule would amend are strictly administrative and do not involve any major economic costs.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would amend administrative procedures which have no significant economic impact.

National Environmental Policy Act

The proposed rule has been reviewed by OSMRE and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with DOI Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 736

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 700 and 736 as follows:

Dated: March 3, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 700—GENERAL

1. The authority citation for Part 700 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. Section 700.5 is amended by adding in alphabetical order a new definition as follows:

§ 700.5 Definitions.

* * * * *

OSM and *OSMRE* means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

* * * * *

PART 736—FEDERAL PROGRAM FOR A STATE

3. The authority citation for Part 736 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

4. Section 736.12 is revised to read as follows:

§ 736.12 Notice, comment and hearing procedures.

Prior to the promulgation or revision of a Federal program for a State, OSMRE shall:

(a) Federal Register Notice. Publish in the **Federal Register** a notice which:

(1) Includes the basis, purpose and substance of the proposed Federal program or revision;

(2) Offers any person an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice;

(3) Offers to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period if requested by any person;

(4) Gives the address of an appropriate place where any person, during normal business hours, may inspect and copy a copy of the administrative record for the proposed Federal program or revision;

(5) For an indirect revision of a Federal program, states that the affected provision of the permanent program is cross-referenced by the Federal program, and thus the proposed permanent program revision also would revise the Federal program;

(b) *Newspaper notice.* For the initial promulgation of a Federal program for a State, publish in a newspaper of general circulation in the coal mining area of the affected State a notice concerning the proposed rulemaking which includes the information required by paragraph (a) of this section, except that for the substance of the proposed Federal program or revision OSMRE may substitute a brief description; and

(c) *Federal agency comment.* As appropriate, solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision.

§ 736.13 [Removed]

5. Section 736.13 is removed.

6. In § 736.14, paragraph (a) is revised to read as follows:

§ 736.14 Director's decision.

(a) After considering all relevant information received under § 736.12, the Director shall decide whether to promulgate or revise a Federal program for the State.

* * * * *

[FR Doc. 87–7004 Filed 3–30–87; 8:45 am]
BILLING CODE 4310–05–M

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Federal Register

Vol. 52, No. 61

Tuesday, March 31, 1987

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Laws	523-5230

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United States Government Manual	523-5230

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Library	523-5240
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

6123-6316.....2
6317-6492.....3
6493-6768.....4
6769-6950.....5
6951-7102.....6
7103-7262.....9
7263-7396.....10
7397-7558.....11
7559-7816.....12
7817-8052.....13
8053-8222.....16
8223-8438.....17
8439-8580.....18
8581-8858.....19
8859-9106.....20
9107-9280.....23
9281-9450.....24
9451-9648.....25
9649-9792.....26
9793-10020.....27
10021-10212.....30
10213-10356.....31

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....7814, 7879

3 CFR

Proclamations:
5612.....6123
5613.....6125
5614.....6769
5615.....6771
5616.....7263
5617.....7265
5618.....8439
5619.....8441
5620.....8443
5621.....9281
5622.....9283
5623.....9793

Executive Orders:
12362 (Amended by EO 12585).....6773
12368 (Amended by EO 12590).....10021
12473 (See EO 12586).....7103
12585.....6773
12586.....7103
12587.....7397
12588.....8859
12589.....8861
12590.....10021

Administrative Orders:
Presidential Determinations:
No. 87-10 of March 5, 1987.....9107
No. 87-11 of March 12, 1987.....9795

4 CFR

Proposed Rules:
21.....9664

5 CFR

110.....7399
300.....7399
351.....10023
410.....7402
630.....10213
831.....10025, 10215
890.....10216
1600.....6127
1630.....8053

Proposed Rules:
340.....9867
752.....9867
572.....7427
930.....8909

7 CFR

8.....8432
52.....6129
57.....7817
68.....7817
210.....7559, 9109
215.....7559, 7560
220.....7559
227.....8223
240.....7267
271.....7554
272.....7554
273.....7554
274.....7554
278.....7554
300.....6951
301.....7562, 9285
318.....8863
403.....6775
413.....6775
418.....7818
419.....7818, 9285
420.....7818
421.....6775, 7818
424.....7818
425.....6775
427.....7818
430.....6775
432.....7818
435.....6775
436.....6775
438.....6775
446.....6775
448.....6775, 7818
452.....9287
736.....8056
800.....6493
905.....10026
907.....6952, 7819, 9110, 9797
908.....7820
910.....7115, 8058, 9111, 9797
911.....7115
915.....7115
925.....8865
932.....7402
944.....8865
947.....7119
948.....7268
980.....8871
985.....9451
1102.....6317
1106.....6317
1434.....6775
1806.....7998
1822.....7998
1901.....7998
1910.....6497
1924.....7998
1930.....7998
1933.....7998
1940.....7998
1942.....7998
1943.....7998
1944.....6132, 7998, 9111,

9649
1945 7998
1951 ..... 6132, 6319, 9111
1955 7998
1965 9111
1980 6498
3900 9798
3901 9798

Proposed Rules:
53 6577
54 6577
55 ..... 6162, 8404
56 ..... 6162, 8404
59 ..... 6162, 8404
70 ..... 6162, 8404
272 7158
273 7158
275 7158
422 9301
736 10104
795 9302
800 7880
810 ..... 7880, 8455
908 7884
911 10108
912 6980
916 9173
917 ..... 6165, 9173
932 6166
946 6167
948 6168
959 ..... 7428, 9870
980 ..... 7428, 9870
1040 8074
1097 8075
1137 6579
1493 8605
1930 8606
1944 ..... 7584, 8606
1965 8606
2201 ..... 6803, 8611

8 CFR

3 7369
214 7062
242 6132
245 6320
249 6320

Proposed Rules:
100 8740
103 8740
109 ..... 8762, 10187
210 8745
211 8740
212 8740
234 8740
242 ..... 7741, 8740
245a 8752
264 8740
274a 8762, 10187
299 8740

9 CPR

51 6523
75 7403
77 8223
78 ..... 6524, 9452
91 8224
92 8436
94 8436
113 9116
303 10028
381 10028

Proposed Rules:
1 10292
2 10298
92 9871
94 7885
319 9303

10 CFR

19 8225
20 8225
21 8225
30 8225
35 9292
39 8225
40 ..... 8225, 9649
50 9453
51 8225
55 9453
70 ..... 8225, 9649, 10033
71 8225
73 ..... 6310, 7821, 9649
74 10033
110 9649
150 8225
456 6710

Proposed Rules:
2 6287
30 7432
40 7432
50 ..... 6334, 6650, 6980, 7432, 7887, 8075, 8460, 8917
55 ..... 7432, 7887
60 7432
61 7432
70 7432
71 7432
72 7432
110 7432
150 7432
430 7972
456 6754
458 6754

11 CFR

Proposed Rules:
110 6580

12 CFR

500 ..... 7120, 8550
505 7120
505a 7120
505b 7120
508 7120
522 7120
523 7120
545 7120
546 9799
552 ..... 7120, 9799
555 7120
556 ..... 7120, 8550
561 ..... 7120, 8242, 8550
563 ..... 7120, 7821, 8188, 8242, 8550, 9799
563b 7120, 8550
563c 7120, 8550
564 7120
569 7120
571 7120
572 7120
572a 9799
574 ..... 7120, 9799
584 7120
620 8581
701 8058
748 8062

Proposed Rules:
225 9304
261 10233
332 7442
563 8207
564 8611
571 7887

13 CFR

121 6133

Proposed Rules:
121 8261

14 CFR

21 ..... 7261, 8040
23 7261
36 7261
39 ..... 6133, 6135, 6287, 6776, 6777, 6952–6956, 7405, 7564–7568, 7823, 8062, 8581, 8582, 8872, 9119, 9293, 9469, 9470, 10043, 10217–10219
43 6650
71 ..... 6136, 6778, 7262, 7369, 7370, 7390, 7406, 8242, 8243, 8873, 9121, 9383, 10044
73 ..... 7370, 8874
91 ..... 6650, 7261, 9622, 9768
97 ..... 8244, 10045
121 ..... 6650, 9622
125 ..... 6956, 9622
127 6650
135 ..... 6650, 7261, 9622, 9768
241 ..... 6524, 9122

Proposed Rules:
Ch. I 8078, 8918
21 ..... 9176, 10109–10111
23 ..... 9176, 10109–10111
36 ..... 7618, 8050
39 ..... 6170, 6804, 6987, 7443, 7619, 8079, 8081, 8082, 8263, 8265, 8612–8615, 8919, 9181, 10113, 10114, 10236–10238
71 ..... 6805, 6988, 6989, 7279, 7444, 7445, 8730, 8920, 8921, 9182–9184, 9312, 9313, 10115
75 ..... 6989, 8920–8923
91 7618
159 7446

15 CFR

371 ..... 6137, 6649
372 6137
373 ..... 6137, 9147
374 6137
376 9147
379 6137
385 9147
386 6137
387 6137
389 6137
399 ..... 6137, 8445
806 8445
904 10324

Proposed Rules:
371 8265
374 8265
399 ..... 8265, 9241

16 CFR

13 ..... 6540, 7407, 8446, 9294, 9655
702 7569
801 7066
802 7066
803 7066

Proposed Rules:
13 ..... 6172, 6806, 8461
703 9314
801 7095
802 7095
803 7095

17 CFR

1 6139
16 6139
240 ..... 8875, 9151
249 9151

Proposed Rules:
1 6812
15 6812
19 6812
140 6588
150 6812
230 8268
239 8268
240 6340
270 ..... 7166, 8268, 8302
274 ..... 7166, 8268

18 CFR

3 7824
271 6545
282 10220
292 9161
375 7824
385 6957
388 7824
389 9161
1301 7407

Proposed Rules:
4 8463
11 8463
35 8616
271 7891
292 6822
375 8463
1312 10342

19 CFR

4 10198
6 10047
24 10198
101 7124
113 9784
133 9471
134 7825
141 10221
146 10198
151 9784
178 ..... 9784, 10047, 10198, 10221
192 8308

Proposed Rules:
133 9498

20 CFR

404 8246
416 8877

Proposed Rules:
404 10116
416 8309

21 CFR

5 ..... 6970, 7269, 7829, 7969
74 ..... 7261, 7829
81 6323
101 6971
176 6649
178 ..... 6323, 10222
312 8798
314 8798

331.....7830
332.....7830
341.....7126, 7830
344.....7830
357.....7830
436.....8550
449.....7741
455.....8550
510.....7831, 7833, 9295, 9756
511.....8798
514.....8798
520.....7831, 9756
522.....7831, 7833, 9756
524.....7831, 9756
529.....7831, 9756
558.....6649, 7261, 7833, 7834, 9295
571.....8583
1308.....6546, 7270, 9802-9806

Proposed Rules:

193.....6344
312.....8850
358.....9992
561.....6344
1308.....7280

22 CFR

33.....7528
514.....7370

23 CFR

655.....7126
658.....7834
777.....8250

Proposed Rules:

655.....7172

24 CFR

40.....9477
146.....7408
200.....6778, 8064, 9827
201.....7841
203.....6908, 7841, 7842, 8064, 9295, 9989
204.....6908, 8064, 9989
213.....8064, 9989
220.....8064, 9989
221.....8064, 9989
222.....8064, 9989
226.....8064, 9989
227.....8064, 9989
234.....7841, 8064, 9989
235.....8064, 9989
237.....8064, 9989
240.....8064, 9989
243.....9161
278.....6300
511.....9161, 9295
570.....6140, 6971
842.....9161
882.....9477, 9827
886.....9827
888.....9478
942.....9161

Proposed Rules:

203.....9666
234.....9666

25 CFR

249.....9655

Proposed Rules:

11.....9669
40.....6482
167.....6822

26 CFR

1.....6428, 6468, 7281, 7408, 8447, 9161, 10049-10052, 10223
5f.....7408
5h.....8405, 10085
46.....9656
51.....10224
301.....6779, 9296
602.....6428, 6468, 6779, 7408, 10052

Proposed Rules:

1.....6467, 7449, 8471, 9185, 10118, 10290
7.....7281
20.....7281
25.....7281
51.....10290
53.....7281
56.....7281
602.....6467, 7449

27 CFR

9.....10224
71.....7370
178.....7132

Proposed Rules:

19.....9873
197.....9873
250.....9873
251.....9873

28 CFR

2.....7574, 8405
14.....7411
600.....7270
601.....7270, 9241

Proposed Rules:

2.....7620, 9382
42.....9885
44.....9274
513.....6297

29 CFR

860.....8448
1601.....10224
1613.....10085
1952.....9162
2676.....7842

Proposed Rules:

103.....7450, 9382
1928.....7451
1952.....9185
2200.....9187

30 CFR

917.....7132
935.....6796
944.....7843

Proposed Rules:

15.....9670
75.....9670
202.....7622
206.....7622
256.....9672
280.....9758
700.....10352
736.....10352
774.....6827
785.....9640, 9644
823.....9644
906.....9887
913.....9402
917.....9890
935.....7176, 8082
938.....6828
942.....6827
944.....9891
946.....9892
948.....9314

31 CFR

545.....7273-7275, 7855

32 CFR

289.....10225
706.....6546, 7136, 8583
1602.....8889
1605.....8889
1621.....8889
1630.....8889
1633.....8889
1648.....8889
1656.....8889
2003.....10190

Proposed Rules:

199.....7453
229.....10342
231a.....6346
818a.....9499
1602.....8924
1605.....8924
1609.....8924
1618.....8924
1621.....8924
1624.....8924
1630.....8924
1633.....8924
1636.....8924
1639.....8924
1642.....8924
1648.....8924
1651.....8924
1653.....8924
1657.....8924
1698.....8924

33 CFR

100.....9162
110.....9828
117.....6972, 9163
147.....9656
151.....7744
158.....7744
161.....7856
165.....6142, 8584, 8892
183.....6973

Proposed Rules:

100.....6990, 7623-7624
110.....6347
117.....6991, 9673
165.....8622, 8623

34 CFR

338.....6142
653.....10006
761.....9440

Proposed Rules:

235.....8570
502.....7380
504.....7380
524.....7380
673.....6924

36 CFR

7.....7372
214.....10086
215.....10086

Proposed Rules:

296.....10342

37 CFR

1.....9386
401.....8552

Proposed Rules:

1.....6696

38 CFR

17.....7575
21.....6547, 7276
36.....6547

Proposed Rules:

1.....8624
14.....8472

39 CFR

10.....6143
111.....6144
224.....7454
960.....6797
962.....7454

Proposed Rules:

10.....8627, 9756

40 CFR

52.....6145, 6324, 7862, 8070
60.....8585-8587, 9164, 9657, 9778
61.....8586-8589, 8724, 9164
65.....7863, 7864
81.....6548, 7865, 8448
131.....9102
180.....6325, 8452, 9492, 9493, 9756
260.....8072
265.....8704
270.....8072
271.....7412
716.....9662
763.....10187

Proposed Rules:

52.....6175, 7802, 8311, 8932, 9502, 9674, 9676, 10239, 10241
60.....7178, 8476
81.....7802
85.....9316
86.....9503
117.....8140
167.....9504
180.....6348, 8478, 9241
228.....9894
264.....8712
265.....8704, 8712
270.....8712
302.....8140, 8172
440.....9414
721.....9508

41 CFR

Ch. 61.....6674
50-201.....6146
101-6.....8893
101-40.....9382
101-47.....9829-9831
201-8.....10086
201-11.....10086
201-30.....10086
201-34.....10086

Proposed Rules:

50-201.....7892
101-38.....9448
201-38.....9900

42 CFR

37.....7866

57 10194
121 10094
122 10094
123 10094
405 6148
413 9833
417 8898
418 7412

Proposed Rules:
433 6350
447 6350

43 CFR

7 9165
11 9042
17 6549
3160 10225

Public Land Orders:
6625 (Corrected by PLO 6640) 6557
6640 6557
6641 10225

Proposed Rules:
7 10342

44 CFR

64 ..... 6326, 10094
65 ..... 8902, 8903
67 ..... 8250, 8904
222 6799

Proposed Rules:
65 8933
67 8084

45 CFR

97 9494

Proposed Rules:
1204 9901
1207 8479
1208 8480

46 CFR

30 7765
98 7765
107 ..... 6974, 9383
109 ..... 6974, 9383
151 7765
153 7765
170 ..... 6974, 9383
172 7765
174 ..... 6974, 9383
221 6329
276 7462
502 6330

Proposed Rules:
160 6992
310 6829
503 ..... 8628, 9756

47 CFR

0 10226
1 ..... 8259, 10226
2 ..... 6152, 7136, 7417, 8906
15 9296
19 7577
21 ..... 7136, 10226
22 10226
23 10226
31 6557
32 ..... 6557, 7579
43 8453
61 10226
64 6557
68 10226
69 8258
73 ..... 6152, 6154, 7148–7150, 7276, 7420, 7580, 8259, 8453, 8454, 8907, 9298, 9299, 10226
74 ..... 7136, 7420, 8259
76 10226
78 ..... 7136, 10226
80 ..... 7417, 10226
90 ..... 6154, 10226
94 ..... 7136, 10226
95 10226
97 7277

Proposed Rules:
Ch. I 8313
25 ..... 6175, 8937
73 ..... 6176, 7182–7185, 7282, 7624–7627, 8084–8086, 8314–8316, 8481, 8937, 9316
74 ..... 7627, 7895

48 CFR

1 8567
3 ..... 7062, 9989
7 9036
8 9036
9 9036
13 9036
15 9036
22 9036
31 9036
32 9036
44 9036
52 9036
53 9036
244 8908
PHS 352 9300
507 8589
514 6562
515 6562
528 6564
533 6562
537 6562
552 ..... 6562, 8589
706 6158
715 6158
1537 8073
5316 6332

Proposed Rules:
32 8576
51 9436
52 ..... 8576, 9436
203 9187
209 9187
232 8481
242 6177
825 6993
5315 6590

49 CFR

1 9863
171 8590
173 ..... 7581, 8590
174 8590
175 8590
176 8590
177 8590
394 7277
533 6564
571 ..... 7150, 7867, 10096
1313 7278

Proposed Rules:
71 10119
171 ..... 6591, 9996
172 6591
173 ..... 6178, 6591
175 9996
176 6591
177 6591
178 6591
180 6591
192 9189
195 9189
219 7185
391 9192
571 ..... 8317, 8482, 9194, 9316, 10122
845 9678
1042 8631
1059 9201
1152 7628
1330 9513

50 CFR

17 ..... 6651, 7369, 7424
23 6160
219 10324
258 7532
285 9170
301 7582
611 ..... 7868, 8592
621 10324
646 9864
671 8319
672 ..... 7868, 9171, 9495
675 8592
681 9496

Proposed Rules:
17 7462
20 7900
216 7912
217 ..... 6179, 8087, 9318, 9902
222 ..... 6179, 8087, 9318, 9902
227 ..... 6179, 8087, 9318, 9902
640 8485
642 ..... 6357, 7463
646 9513
653 9902
658 7283
661 10125
671 6199

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 30, 1987